Award No. 4152
Docket No. DC-4210

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim is made on behalf of William Redmond, Parlor Car Porter of the Chicago, Rock Island and Pacific Railroad Company, who was not paid the basic guaranteed wage for the month of July, 1947, as provided for in Rule 2 (a) of the existing agreement. We allege that Rule 2 (a) of the existing agreement has been violated in that Mr. Redmond complied with all of the requirements of said rule and Carrier refused payment of the guaranteed wage for the month of July, 1947.

We ask that Mr. Redmond be compensated for the difference in the number of hours paid for the month of July, 1947, as against the number of hours guaranteed under the terms of Rule 2 (a) of the agreement.

EMPLOYES' STATEMENT OF FACTS: William Redmond was regularly assigned as parlor car porter on Car No. 3500 operating on Trains 23 and 10 of the Carrier between Chicago and Omaha, Nebraska. Mr. Redmond remained on this assignment up to and including July 25, 1947 when the operation of this service was discontinued. Mr. Redmond was not notified by bulletin, as provided for in Rule 1 of the agreement, that the run was abolished and remained available for duty during the remainder of the month. Since he received no opportunity to perform duty subsequent to July 25, 1947, claim for payment of the monthly guarantee was made by Mr. Redmond and refused by the Carrier.

POSITION OF EMPLOYES: When the parlor car was removed from service on Trains Nos. 23 and 10, no notice of the abolishment of the run was made by bulletin as provided for in Rule 1 of the current agreement which reads as follows:

> "SCOPE. This agreement concerns dining and cafe car chefs, cooks, waiters, pantrymen and waiters-in-charge in dining, club, dinette, cafe and snack cars, parlor car porters, lounge car porters, barber-porters, **club car porters,** chair car attendants and bus boys where such positions are established by the management, and so long as such positions are maintained, the management retaining the right to abolish such positions at any time **notice to be given employes affected.**" (Emphasis ours.)

This failure to give notice to Mr. Redmond of the cancellation of his assignment constitutes a breach of the agreement. Carrier's insistence that such notice was given verbally still fails to satisfy the spirit of the agreement. Attention is directed to the fact that Mr. Redmond was not given prior notice of the cancellation, but was informed of it at the completion of his

change from time to time. Claimant's assignment was changed, and he understood that it was changed. He turned in his keys to the Commissary. and that is conclusive proof that he was notified and understood that his assignment was discontinued and that it would be his obligation, as he had done in the past, to exercise his seniority, if he expected to continue his employment. As stated in our letter of March 8, 1948, to the General Chairman, Rule 2 (f) provides a guarantee for men who are regularly assigned so long as their assignment is in effect, but does not guarantee to them a payment for two hundred forty hours in any and every month under any and all circumstances. There is no obligation whatsoever in the controlling agreement that the Superintendent of Dining and Parlor Cars issue any bulletin advising employes that assignments are discontinued. Oral notification such as was given in this case meets the requirements of the agreement. We contend that the Claimant had no right to sit idly by and not assert his seniority. His failure to assert his seniority is solely his responsibility.

To summarize:

It is our position that this claim is not properly before the Board and is therefore not cognizable by the Board inasmuch as the employes have not handled the claim in accordance with Rule 11 of the controlling agreement.

If the Board should disagree with the carrier's position as summarized above, then we contend—

1. That William Redmond knew that he should exercise his seniority in the classification of Chair Car Attendant inasmuch as he was the junior Parlor Car Porter.

2. That Rule 1 and Rule 2 (f) limits the application of the 240 hour basic guarantee by giving to the carrier the right to establish and abolish positions and subjecting the guarantee to changes in assignments which may be made from time to time.

(Exhibits not reproduced.)

OPINION OF BOARD: The evidence of record discloses no grounds for disturbing the action of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence of record discloses no grounds for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1948.