

Award No. 4240
Docket No. DC-4176

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Stewards E. F. Waldrop, F. A. Hilburn and William M. Hitt, to be reinstated as Stewards on Trains 5 and 6; and paid for time involved since being replaced on these trains by waiters.

EMPLOYES' STATEMENT OF FACTS: E. F. Waldrop, F. A. Hilburn, and William M. Hitt were regularly assigned as stewards on Trains 5 and 6 between Hamlet, North Carolina, and Birmingham, Alabama; holding these positions by virtue of their seniority. This prior to April 1, 1947.

On January 31, 1947, General Superintendent of Dining Cars wrote these men as follows:

SEABOARD AIR LINE RAILROAD

Washington, D. C.,
January 31, 1947

— Personal —

Mr. E. F. Waldrop,
Mr. W. M. Hitt,
Mr. F. A. Austin,
Mr. F. A. Hilburn,

Dining Car Stewards, trains 5-6.

For your personal information:

The amount of business being done on 5 and 6 indicates that we will not be able to continue operating dining car service on this train much longer. It will certainly be necessary that we reduce the crews unless business picks up considerably.

It will, no doubt, be necessary to remove stewards and re-establish past practice of operating waiter-in-charge on these cars. I am unable to say just when this will happen and am only giving you this as advance information as no doubt that this will be necessary before long.

/s/ C. G. Douglass,
C. G. Douglass,
General Superintendent Dining Cars.

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by the Florida State Railroad Commission which directed that all railroads supply a dining car steward for each dining car operated in that State.

For the above reasons the carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement between the parties which covers rates of pay, rules and working conditions for Dining Car Stewards became effective April 30, 1940. The claimants (Dining Car Stewards) were displaced by Waiters-in-Charge.

The Employees contend that Carrier's action deprived the Claimants of work to which they were entitled under their Agreement and the right of choice of runs on the basis of their accrued seniority; the ability and fitness of claimants not being in question; that while the Carrier is free to abolish positions, the work that remains in connection with the positions must be performed by the class of employees to which the Agreement applies; also that past practice of Carrier in assigning work of Stewards to persons not covered by the Stewards' Agreement does not change the binding effect of rules covering the same. They cite Awards 757, 779, and 1235.

The Carrier in defense of its position contends that lack of business made necessary the change; that Claimants Waldrop and Hilburn exercised their seniority in accordance with Article 7 of the controlling Agreement on other runs and lost no time and Hitt laid off for a short time and then exercised his seniority on another run. On behalf of Carrier is cited Award 3523, adopted by the Board without a Referee.

Carrier further contends that Waiters-in-Charge have been in use on respondent's lines since 1909 and continue to be used to the present time; and that through the negotiations and adoption and revision of Agreements no protest of this practice has been made. They cite Awards 1257, 1397, 1609, 2326, 2436 and 4104.

By reason of the traditional practice of long standing it is considered to show the interpretation the parties placed on the Agreement. Failure to deal directly with this practice in the adoptions and revision of Agreements over a long term of years is conclusive of the intention with reference thereto.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 claim is denied.

AWARD

Claim denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1948.