Award No. 4721

Docket No. DC-4761

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Dining Car Stewards employed on the International-Great Northern Railroad that stewards assigned to Trains 25 and 26 were displaced by employes who do not hold seniority rights as Dining Car Stewards on October 15, 1945.

EMPLOYES' STATEMENT OF FACTS: Prior to October 15, 1945, Dining Car Stewards were assigned to Trains 25 and 26 operating between Houston, Texas and Longview, Texas. Effective October 15, 1945, Dining Car Stewards were relieved and dining car was placed in charge of waiter. Dining Car 10232 was assigned to operate Houston to Longview on Train 26 and Longview to Houston on Train 25.

Dining Car Stewards assigned to Trains 25 and 26 hold seniority rights as Dining Car Stewards and do not hold seniority rights in any other service. Waiters do not hold seniority rights as Stewards on International-Great Northern Railroad.

POSITION OF EMPLOYES: Committee representing the employes are quoting the following Articles contained in current working Agreement between Missouri Pacific Railroad Company, Gulf Coast Lines, International-Great Northern Railroad and Brotherhood of Railroad Trainmen covering Dining Car Stewards, effective October 1, 1936:

"SCOPE

Rule 1. The following rules will govern the rates of pay, hours of service and working conditions of Dining Car Stewards, except that this agreement shall not apply to Stewards on dining cars operating in through service between San Antonio, Texas and points in Mexico."

"EXTRA STEWARDS

Rule 5. Extra stewards performing road service in place of a regular assigned steward, or on an extra assignment, will be paid in accordance with their years of service and classification. When used for extra road service, stewards will be paid for actual time worked, with a minimum of eight (8) hours for each day so used."

agreement on September 1, 1927. If such practices had been directly abrogated in the current agreement, this argument could readily be sustained. But the failure of the parties to deal directly with these practices in subsequent agreements and their recognition by the parties for more than fifteen years after the negotiation of the last collective agreement furnishes convincing proof that their abrogation was never intended. See Award 1435. The conduct of the parties to a contract is often just as expressive of intention as the written word and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their action with reference thereto, affords a safe guide in determining what the parties themselves had in mind when the contract was made."

In Award 4104 Referee Parker held in part as follows:

"One of these rules, now so well established by Awards of this Division as to almost preclude necessity for their citation, is that when a collective bargaining contract is negotiated and existing practices are not abrogated or changed by its terms such practices are just as enforceable as if they had been expressly authorized by the terms of the instrument itself. See Awards 2436, 1435 and 1397."

The Carrier argues that the Board take into consideration that there is another party interested. That other party is the waiter-in-charge. He had an agreement with this Carrier prior to the time the steward had an agreement. Prior to either of the agreements there were both stewards and waiters-in-charge working on this property in the same manner as the operation was conducted on trains 25 and 26 effective with the change on October 15, 1945.

The Carrier also points to the fact that there was a new agreement entered into with the Stewards, as shown by its Statement of Facts, on March 1, 1948, which was subsequent to the date of this occurrence; i:e:. October 15, 1945, and there was no change made in the agreement with reference to the duties of a steward or when or where or under what conditions a steward would be employed. The Employes knew when they entered into the first agreement in 1936, and they have known since that date, that waiters-in-charge have been assigned in dining service at many points on the system, and particularly in the territory where this dispute arose, and nevere before has there been any protest made.

Claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to Award 4720. The same Agreement is inolved, although the International-Great Northern Railroad is the respondent Carrier here. The facts involved are essentially the same, except with respect to the trains and runs concerned. The principles and reasoning set forth in our Opinion in the above-mentioned award are applicable here. Accordingly, the claim will be sustained.

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

That the parties waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. J. Tummons
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4721
Docket DC-4761

NAME OF CARRIER: International-Great Northern Railroad Company.

NAME OF ORGANIZATION: Brotherhood of Railroad Trainmen.

Upon application of the representatives of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Award 4721 applied to the factual situation presented in the submission of the parties. It is to be applied to trains 25 and 26 when operated with the same type of equipment as indicated in the record upon which the Award was based. To attempt to dispose of questions involving other trains or the same trains operating with different types of equipment would be going beyond the function of interpretation, and, in effect, handling a new case on an improper record.

Referee Francis J. Robertson, who sat with the Division as a member when Award No. 4721 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1950.