

Award No. 4896

Docket No. DC-4980

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 495, on the property of Seaboard Airline Railway Company, for and on behalf of Chef Cook A. S. Malcolm, that he be compensated for net wage loss suffered and his net expenses incurred by reason of Carrier's action in removing him from assignment as Chef Cook—Train 5, December 17, 1947 in violation of Rule 5(1) of Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant bid for assignment as Chef Cook—Train 5 on November 7, 1947 pursuant to Bulletin No. 11-7-106. He was awarded that position on November 19, 1947 under Bulletin No. 11-19-109. Previously the assignment was held by Will Honor who was, sometime prior to October 13, 1947, involved in an automobile accident at Hamlet, North Carolina and was imprisoned for 90 days as a result thereof. The record in the instant claim discloses that on or about October 3, 1947 to January 10, 1948.

Carrier acknowledged this circumstance in a letter, copy of which is set out as follows:

"October 3, 1947
Will Honor
CR

Will Honor
603 Charlotte Street
Hamlet, N. C.

As requested in telephone conversation we will grant you a 90-day leave of absence, effective October 13, 1947, expiring January 10, 1948.

(Signed)
C. G. Douglass
General Superintendent Dining Cars.

copy—
Mr. Edmond Johnson
Local 495, DCEJ."

On December 17, 1947 Carrier permitted Honor to displace Claimant as Chef Cook—Train 5.

Rule 5(1) of the Agreement which governs the instant claim is as follows:

"LEAVE OF ABSENCE, (1), An employe shall not be granted a leave of absence for a longer period than (3) months, except in

OPINION OF BOARD: Will Honor was the regularly assigned Chef operating on diner, Trains 5 and 6, between Hamlet, North Carolina, and Birmingham, Alabama. Due to circumstances not here important he made oral request for a leave of absence to the Carrier's Superintendent of Dining Cars for the avowed purpose of protecting his seniority rights. In compliance with such request the official last named granted Honor a written leave of absence for ninety days effective October 13, 1947 and expiring January 10, 1948.

The vacancy thus created in the position of Chef on Trains 5 and 6 was bulletined in conformity with Rule 5, Section (g) of the current agreement. The claimant, A. S. Malcolm, conceded to then be Honor's junior, bid for and was awarded the position on November 19, 1947. He then took over the assignment and worked it until December 17, 1947, on which date he was replaced by Honor who had returned and reported ready for duty.

The claim is founded upon an alleged violation of Rule 5 (1) of the current agreement which reads:

"LEAVE OF ABSENCE. (1). An employe shall not be granted a leave of absence for a longer period than three (3) months, except in case of sickness of himself or members of his immediate family, or when serving on the committee. Proper leave of absence must be obtained from the Superintendent of Dining Service and shall be in writing if leave is to be for more than thirty (30) days, copy to be furnished to the General Chairman. An employe who engages in work outside the company while on leave of absence shall forfeit his seniority unless special arrangements have been made in advance with the Superintendent." (Emphasis supplied.)

The principle, in fact the only, contention advanced and urged by the Brotherhood in support of the claim is that the rule heretofore quoted required Honor's request for a leave of absence as well as the leave of absence itself to be in writing. Based on this construction of the rule it is argued the Carrier had no right to grant him the leave of absence in question except on his written request and that its action in doing so upon his oral application only constituted a violation of the rule and resulted in a forfeiture of his seniority rights even though such leave of absence is conceded to have been granted in written form.

We fail to find anything in Rule 5 (1) which warrants the construction given it by the Brotherhood. Its terms are clear and unambiguous. When carefully analyzed, we are convinced they compel the conclusion that when more than thirty days' leave is desired it is the leave of absence, not the request therefor, which has to be in writing. Since that was obtained in the instant case the requirements of the rule were satisfied.

Suggestions are to be found in the record to the effect Honor engaged in work outside the company while on leave, that he did not return to work until after expiration of the date fixed for its termination, and that no copy of such leave of absence was furnished to the General Chairman, all in violation of the rule. Heretofore we have indicated those matters were not urged or relied on as grounds for allowance of the claim. Notwithstanding, it should perhaps be stated they were not established by proof and hence afford no sound basis for upholding it.

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 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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of June, 1950.