Award No. 5017
Docket No. DC-4990

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351

THE ATCHISON, TOPEKA AND SANTE FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; PANHANDLE AND SANTE FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 351, on behalf of Chefs Steven Johnson and John B. Giddins and Fourth Cooks Lester Batcheler and Tolivar Bledso and other employes similarly situated on the property of Atchison, Topeka & Santa Fe R. R. Company for compensation due them from on or about April 4, 1948 for the difference between their respective rates of pay prior to said date and their respective rates of pay after said date, said rates being reduced by Carriers' action in changing Trains 5-4, Texas Ranger, from Class A run to Class D run without prior negotiation and agreement with Organization in violation of existing agreement and Railway Labor Act.

EMPLOYES' STATEMENT OF FACTS: Prior to April 4, 1948 Claimants Johnson and Giddins were employed as Chefs on Carriers' Trains 5-6, Texas Ranger, which run was classified as a Class A run with the rates of pay provided therefor as set out in Employes' Exhibit A. (Carrier's rates of pay schedule effective September 1, 1947 excerpted as to Class A and Class D runs only) attached hereto. Claimants Batcheler and Bledso were employed on the same run as Fourth Cooks and paid Class A rates for that classification of work as set out in Employes' Exhibit A.

On April 4, 1948 Carrier unilaterally reduced Claimants' rates of pay by changing the class of the run to which Claimants were regularly assigned from Class A to Class D. At no time did Carrier give any notice of any kind whatsoever to Claimants or the Organization as Claimants' representatives.

Claimants' length of service in their respective classification is as follows:

(1) Steve Johnson, Chef—From November 6, 1943

(2) John B. Giddins, Chef—From February 14, 1946

(3) Lester Batcheler, Fourth Cook—From July 29, 1944

(4) Tolivar Bledso, Fourth Cook—From November 12, 1944

POSITION OF EMPLOYES: Employes contend that Carrier violated the existing Agreement by unilaterally reclassifying the run to which Claimants were assigned on the Texas Ranger, a Class A run, to a Class D run. It is elemental that parties to an agreement can only modify or change that agree-

assignment of that work to another class, i.e., waiters-in-charge. The claimants in the instant dispute were neither deprived of work nor the right to continued service in the same class to which assigned prior to the change in dining car assignments effective April 4, 1948. The claimant employes in this dispute were, prior to April 4, 1948, assigned in Class "D" waiter-in-charge dining car service on Trains 27 and 28 and were simply transferred to the same class "D" waiter-in-charge dining car service on Trains 5 and 6 effective April 4, 1948. In other words, the claimant employes in this dispute were in the same identical class of dining car service after April 4, 1948 that they were prior to that date.

The Employes' claim in the instant dispute is not only an attempt to obtain the establishment of an additional Class "A" run in lieu of a long-existing Class "D" run, but is also an attempt to obtain, through the medium of an award, instead of by negotiation, the adoption of a new rule or principle that existing assignments may not be transferred from one train to another without negotiation and agreement between the Organization and the Carrier. The Board as established by the amended Railway Labor Act is only authorized to construe and interpret the agreement rules in effect between the parties, and may not amend or otherwise revise those rules.

The Carrier submits that the assignment of the dining car run on Trains 5 and 6 between Newton and Fort Worth as a Class "D" run as of April 4, 1948 was not in violation of any of the provisions of the existing Agreement nor was it arbitrary, unreasonable or capricious. The assignment was made in good faith and in reasonable exercise of managerial discretion.

In conclusion, the Carrier asserts that in addition to not being supported by the agreement rules, the Employes' claim in this dispute was not presented until September 29, 1948 and is therefore subject to the restrictions contained in Article VI, Section 9 of the current Dining Car Employes' Agreement reading:

> "Section 9. No pay claim will be given consideration or adjusted unless presented to the Company in writing within 30 days from pay day for last pay period of calendar month during which claim originated. When time claims are filed within the 30 day period named and are not allowed, the employe will be notified of the reason therefor. If a time claim involving a shortage of eight (8) hours or more is allowed, the employe will upon request be given a separate voucher for the amount."

The Carrier respectfully requests that the claim be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: The statement of claim appearing in the Employes' ex parte submission is set forth in full immediately preceding this Opinion and need not be repeated. We note, however, the trains involved are 5-6 instead of 5-4 as therein stated.

The Carrier insists, and we may add without denial on the part of the Employes, the claim as handled on the property did not include the phrase "and other employes similarly situated" but was limited solely to the four employes therein named. At this time, for reasons to be presently disclosed, we regard the matter as of little consequence.

From an appendix attached to the current Agreement it appears certain trains operated by the Carrier were classified under Class A, others under Class B, C and D, and that employes assigned to positions on Class A trains received higher rates of pay than those assigned to positions on Class D trains. We are not here concerned with Classes B and C.

Allegations of fact contained in the respective submissions are wholly irreconcilable and entirely unsupported by probative evidence.

To illustrate, the Employes state that prior to April 4, 1943, claimants, Johnson and Giddins, were assigned to and worked positions as Chefs on Carrier's Train 5-6, the Texas Ranger, that Batcheler and Bledso were employed as Fourth Cooks on such train, and that all of them were paid Class A rates for their several positions. They further allege that subsequent to the date mentioned the Carrier reduced such employes' rates of pay by changing the class of the run to which they were regularly assigned from Class A to Class D and that thereafter they were paid at the rates fixed in Class D.

On the other hand, the Carrier asserts none of the claimants was ever assigned to a Class "A" dining car assignment, either prior to or after April 4, 1948, on any of the Carrier's passenger trains, but were assigned at all times to Class "D" dining car runs or assignments on local passenger train runs. In fact, it flatly denies they were ever assigned as Chefs and Cooks on the Texas Ranger. It further states that there has never been any change in their assigned class of service and that they continued to receive exactly the same rates of pay after April 4, 1948, they had received prior to that date.

This Division of the Board is now, and always has been, desirous of making disposition of disputes between carriers and their employes, brought to it under existing provisions of The Railway Labor Act, as expeditiously as possible. However, since claims for compensation based upon alleged violations of existing agreements of necessity depend upon the facts of the particular case involved, it is obvious promptness can only be achieved when the parties make it possible by presenting an adequate record in support of their respective positions.

In the instant case, as we have heretofore indicated, all we have before us are directly conflicting assertions as to the decisive facts relied on. In fact, so divergent, that it is crystal clear one or the other of the parties is mistaken. In that situation, with a record devoid of any probative evidence whatsoever, all we can do is to remand the cause for a joint check to determine the facts. It is so ordered.

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 facts relied upon by each of the parties are unsupported by evidence and so conflicting they cannot be resolved without remanding the cause for a joint check so that they may be determined.

AWARD

The case is remanded as per the Opinion and the Findings without prejudice to the rights of the parties, or either of them.

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.