

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Locals 41, 356 and 582, on the property of the Southern Pacific Railroad Company (Pacific System) that:

(1) The carrier has violated the provisions of the existing agreement, particularly Rules 14 and 15 thereof and continues to violate said rules by refusing to assign Carl Gray to position of Bartender on the "Starlight" (trains 94 and 95) operating between Los Angeles and San Francisco, and

(2) that Carl Gray be assigned to the disputed position and be allowed all seniority he would have accrued under Rule 15 (d) retroactive to the date wrongful assignment was made to Junior employe, and such junior employe's name be stricken from the Bartenders' Seniority Roster; and

(3) that Carl Gray be compensated to the full extent—that is the difference between what he has been paid and the amounts he would have earned in the Bartender's position on the Starlight (trains 94 and 95) retroactive to the date junior employe was assigned.

EMPLOYEES' STATEMENT OF FACTS: Carl Gray entered the service of the Carrier as a dining car waiter April 4, 1934. During this period of unbroken service he has maintained an excellent record. Carl Gray filed bid under Rule 14, of the existing agreement for position of Bartender on the Starlight, (trains 94 and 95) a new train with home terminal at Los Angeles. The carrier awarded the positions to 3 junior employes—none of whom had prior seniority as Bartender. Carl Gray's bid was rejected.

There is in existence an agreement between the Carrier and this organization, governing Bartenders which became effective, and amended by Mediation Agreement dated July 25, 1949. Copies of these agreements are on file with Your Board.

Under the terms of these Agreements, Carl Gray, through his organization made immediate protest of the rejection of his bid and the assignment of junior employes. A conference on the protest was properly scheduled with the Superintendent of Dining Car Service at Los Angeles, California. When the Carrier learned that the local committee was to be assisted at this conference by an International Officer the Superintendent refused to entertain the Committee.

by interpretation, be equivalent to writing new rules into the agreement and to nullifying certain sections of existing rules thereof, and therefore the claim should be dismissed.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and the applicable Agreement are similar and present the same problem as in Award No. 5147. For the reasons there expressed, the Board finds that the Carrier did not violate the current Agreement, as amended.

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of December, 1950.