

Award No. 5382

Docket No. DC-4990

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351

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

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 351, on behalf of Chefs Steven Johnson and John B. Giddins and Fourth Cooks Lester Batcheler and Tolivar Bledso and other employees similarly situated on the property of Atchison, Topeka and 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 5-6, 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.

EMPLOYEES' RESUBMISSION PURSUANT TO AWARD NO. 5017: Under date of August 10, 1950 Third Division, National Railroad Adjustment Board, Hon. Jay S. Parker, Referee, rendered its award remanding the claim to the parties for a joint check to determine the facts. Within thirty days of that date and prior to September 10, 1950, Employees' General Chairman met in conference with Carrier and requested that a joint check of the facts be made and a joint submission with respect to the facts be filed in the instant claim. Carrier refused to make such check or submission. Accordingly, the Employees determined the facts ex parte and submit them as follows:

Prior to April 4, 1948 Carrier operated Trains 5 and 6 ("The Ranger") between Chicago and Galveston, which run was a class-A run, as provided for in the Appendix attached to the current agreement. On and after April 4, 1948 Carrier operated Trains 5 and 6 from Newton, Kansas to Galveston and return, which run, together with the train operated from Chicago to Newton, Kansas on and after April 4, 1948, was known and designated by Carrier as "The Ranger."

Claimants were assigned to dining car service on April 4, 1948 and thereafter on the run operated from Newton, Kansas to Galveston and return. On and after April 4, 1948 Carrier's time-table and folder designated and described the trains operated between Chicago and Galveston as "The Ranger."

Employees contend that, inasmuch as the Appendix to the current agreement provides for Class-A rates for the run designated as "The Ranger," and as the run between Chicago and Galveston on and after April 4, 1948 was designated as "The Ranger," therefore, employees employed in Carrier's dining car service on "The Ranger" must be paid Class-A rates. Claimants

"D" dining car assignment between Arkansas City, Kansas and Fort Worth, Texas on local trains Nos. 27 and 28 which operated between Newton, Kansas and Galveston, Texas. The claimants continued on the same Class "D" dining car run or assignment subsequent to April 4, 1948 when it was transferred from local trains Nos. 27 and 28 to local passenger trains Nos. 5 and 6 and assigned between Newton, Kansas and Fort Worth, Texas in the rearrangement of the Carrier's passenger train service, as explained in the Carrier's original submission. In other words, the claimants were assigned to and continued to perform the same class of dining car service, i.e., Class "D," subsequent to April 4, 1948 that they had performed prior to that date; the only change being that their assignment operated between Newton, Kansas and Fort Worth, Texas on local trains Nos. 5 and 6 instead of between Arkansas City, Kansas and Fort Worth, Texas on former local trains Nos. 27 and 28.

As to the argument advanced by the employees in the last paragraph of their resubmission, the Carrier asserts that the Class "A" rates to which the employees refer, as appearing in the Appendix to the current Agreement, applied to the Class "A" dining car assignment which was in existence prior to April 4, 1948 between Chicago, Illinois and Fort Worth, Texas on the Carrier's thru "Ranger" passenger trains Nos. 5 and 6 and which was, as explained in the Carrier's original submission, transferred, together with the employees assigned thereto, to the Carrier's "Texas Chief" trains Nos. 15-16 which replaced former Ranger Trains Nos. 5-6, effective April 4, 1948, between Chicago, Illinois and Galveston, Texas. In other words, the claimant employees in this dispute were not assigned to a dining car run designated as "The Ranger" between Chicago, Illinois and Galveston, Texas on and after April 4, 1948, as alleged by the Employees. The only dining car run that operated between Chicago and Galveston subsequent to April 4, 1948 was the Class "A" dining car run on the Carrier's "Texas Chief" Trains Nos. 15-16, and is not involved in this dispute. The claimant employees were, on the contrary, assigned to a Class "D" dining car run between Newton, Kansas and Fort Worth, Texas on local trains Nos. 5-6 which only operated between Newton, Kansas and Galveston, Texas. It will thus be apparent that the Class "A" rates, referred to by the Employees, were not applicable to the Class "D" dining car run between Newton, Kansas and Fort Worth, Texas on local trains Nos. 5-6 which was occupied by the claimant employees, and was the same identical Class "D" dining car run that was in existence and occupied by those claimant employees on local trains Nos. 27-28 between Arkansas City, Kansas and Fort Worth, Texas prior to April 4, 1948.

The facts as stated in the Carrier's original submission and rebuttal are irrefutable and cannot be proven incorrect. The employees' original statement of facts dated October 11, 1949 and the resubmission dated April 4, 1951 contain misleading and incorrect statements of the actual facts in the case. At no time have the employees presented any evidence whatever that the Carrier has violated any rule of the Dining Car Employees' Agreement. The claim of the employees has no foundation either in fact or otherwise and should be declined.

The Board is respectfully requested to again consider the Carrier's complete submission in this docket and requests the Board to render an award in its favor.

OPINION OF BOARD: The question involved in this docket is the same that was presented to this Division in Award 5017. That award directed the parties to make a joint check to determine the facts. This has not yet been done.

We must therefore again remand the case for a joint check to determine the facts.

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 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 9th day of July, 1951.