

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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 Air Line Railway that the Chef James Stephens be compensated to the extent of loss suffered in wages from December 10, 1940 until November 15, 1947, said amount being the difference between what he received as wages for stated period and wages he should have received for same period.

EMPLOYEES' STATEMENT OF FACTS: Claimant has seniority as Chef dating from 1920 as shown by Carrier's Seniority Roster. On or about August 3, 1940, Claimant resigned from Carrier's service. On December 10, 1940, he returned to service with Carrier with full seniority rights. His original seniority date was retained in Carrier's Roster and has so remained up to the present time.

From December 10, 1940, he was paid Fifty-eight (58¢) cents per hour for work performed. On December 10, 1940, there was no agreement between Carrier and Organization. The first agreement between the parties became effective on December 1, 1943. The rate established and paid to Chefs of Claimant's seniority, on and after December 10, 1940, was sixty-four (64¢) cents per hour.

Therefore, Carrier under paid Claimant at the rate of six (6¢) cents per hour from December 10, 1940 until November 15, 1947, at which time he was accorded the schedule rate for an employe of his seniority.

Carrier has taken the position, during handling of the instant claim on its property, that the provisions of Rule IX, Section (c), of the current Agreement, bars all of Claimant's claim except that portion for a period of thirty (30) days from October 15 to November 15, 1947. Rule IX, Section (c) reads as follows:

"Statute of limitation. No claim for time or grievance matters will be considered under this agreement unless submitted to proper officer in writing within thirty (30) days from date of occurrence. The right of appeal through regular channel is accorded provided such appeal is made in writing within thirty (30) days from date of advice of decision."

POSITION OF EMPLOYEES: Employees contend that Carrier's action in reinstating Claimant to its service on December 10, 1940, without effecting any changes in his seniority date, conclusively bars Carrier from changing Claimant's original seniority date at this time, **ten (10) years** after Claimant's reinstatement. Even conceding for the purpose of argument that

'Claims of employees which may arise under this agreement shall not be subject to monetary recovery unless presented within sixty days from the date of events or circumstances on which the claim is based.'

"It will be noted that the rule does not relate the time within which the claim must be made to when the party affected by such events or circumstances becomes aware of any rights he may have by reason thereof but to the date thereof. The dates of the events or circumstances out of which this claim arises are the improper displacement of Ferguson as Section Foreman on October 3, 1947, and Ferguson's subsequent displacement of claimant on October 9, 1947. The claim being for a monetary recovery and having been made more than sixty days subsequent to October 9, 1947, and consequently all monetary claims resulting therefrom but based thereon had to be made within the time so limited."

In the instant claim no protest or claim was filed until after a lapse of almost seven years, notwithstanding the requirements of Article 9(a) of the 1938 Agreement and Rule IX (c) of the current agreement, which clearly provides that no claims for time or grievance matters will be considered unless submitted to the proper officer in writing within 30 days from the date of occurrence and, even had the two agreements been silent on a statute of limitation covering time claims and grievance matters, Carrier feels there is no basis for this claim as Stephens was paid the proper step-up rates after he was re-employed in December 1940 as was agreed to between he and Carrier's former Superintendent Dining Car Service as a consideration in his being re-employed and for the foregoing reasons, Carrier respectfully requests that this claim be denied.

Attached hereto and made a part of this Initial Answer are Carrier's Exhibits "A" to "K", each inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: James Stephens (claimant) entered the service of the Respondent on August 31, 1920, as a second cook; promoted to chef November 1, 1921. He continued in that capacity until August 3, 1940, when he was held out of service pending investigation on the charge of violation of Carrier's rules and regulations. On August 4, 1940, and before investigation had been held, claimant in a telegram to the Superintendent of Dining Car Service tendered his resignation. His resignation was accepted in writing August 6, 1940.

On November 8, 1940, Stephens wrote the Superintendent of Dining Car Service making application for a job as cook. Superintendent of Dining Car Service suggested that Stephens report at his office on November 10, 1940. Conference was held, and a definite understanding was had with Stephens that he would be reemployed and allowed the rate applicable to a second-year chef and that if there were no objections on the part of the other employees or the Organization, he would be given his original seniority date. Stephens accepted these terms and conditions governing his re-employment. When the new seniority roster was issued in July, 1941, Stephens' name was shown thereon with seniority date of August 31, 1920, as second cook, and November 1, 1921, as chef. No complaints or objections were offered thereto by any employee or representative of Local 495, and Stephens' name has continued to be shown on the roster accordingly.

The Carrier states repeatedly that claimant was returned to service on December 10, 1940, with the understanding that his seniority would stand intact unless objections was raised by other employees or the Organization and that his rate upon his return would be that of second-year chef.

The Employees, although they had full opportunity to do so, have not challenged either the validity or the propriety of the alleged conditions under which claimant was returned to service.

Therefore, we conclude that the claim is without merit and should be denied.

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 claim is without merit and will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of July, 1951.