

Award No. 5573

Docket No. DC-5456

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351, on the property of the New York Central System, for and on behalf of Mr. John E. Johnson, that:

1. Carrier violated the Current Agreement, particularly the seniority provisions thereof; by removing Mr. John E. Johnson's name therefrom, and
2. that Carrier continues to violate the current agreement by refusing to permit Mr. John E. Johnson to exercise his seniority date of January 4, 1936, as waiter or his seniority date of July 20, 1945, as Waiter-in-Charge; and
3. that Carrier now be required to restore Mr. John E. Johnson's name to the Waiters and Waiters-in-charge seniority roster and compensate him to the extent he has suffered retroactive to November 11, 1948, the first date he made request upon Carrier to exercise seniority over junior waiters or waiters-in-charge.

EMPLOYEES' STATEMENT OF FACTS: Mr. John E. Johnson entered the service of the New York Central System Dining Car Department (Lines West) on January 4, 1936. On July 20, 1945, he was promoted to position of Waiter-in-Charge. At the Carrier's request Mr. Johnson was, after promotion to Waiter-in-Charge, given extra assignments as a Dining Car Steward.

During 1947, Mr. Johnson was again promoted by Management to the position of "Instruction Waiter, a position comparable to Supervisor or Inspector of service." He, from time to time continued to be given extra assignments as dining car steward.

During the incumbency in the position of Instruction Waiter, Mr. Johnson continued to retain and accumulate seniority under the provisions of the Waiters and Waiters-in-Charge agreement.

On or about February 2, 1948, Carrier's Superintendent of Dining Car Service, at Chicago, requested Mr. Johnson to take a permanent position as Dining Car Steward. Mr. Johnson agreed to take the position. The Superintendent thereupon entered into a private agreement with Mr. Johnson to waive his seniority rights on the Waiters and Waiters-in-Charge roster on the grounds that such waiver of rights was necessary because of an agreement between the Carrier and the Dining Car Stewards prohibiting Dining Car Stewards from holding seniority rights under any other agreement.

claim must be appealed within sixty (60) days, and, if not so appealed, it shall be deemed finally disposed of."

CONCLUSION

For the reasons set forth in the foregoing, carrier respectfully urges that the claim of the employees in this matter is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows Claimant entered Carrier's service on January 4, 1936, as dining car waiter. On July 20, 1945, he was promoted to waiter-in-charge and during the period March 16, 1947 to July 7, 1947, he was assigned temporarily as instructor-waiters, a supervisory position excepted from the Agreement.

On or about February 6, 1948, Claimant accepted position of dining car steward, a class of employees covered by Agreement between the Carrier and the Brotherhood of Railroad Trainmen which contained a rule providing—

"1. Employees from other branches of service may be assigned as dining car stewards provided—

a. * * *

b. They do not retain seniority rights under any other agreement."

Under date of February 5, 1948, Claimant gave Carrier's Superintendent-Dining Car Service a letter stating—

"In accepting a position as steward I willingly relinquish my seniority rights as waiter and waiter-in-charge without any regrets whatsoever."

On September 27, 1948 Claimant was dismissed from the service. On November 11, 1948, he was re-employed as waiter with seniority as such from November 11, 1948.

There is nothing in the record indicating that either the Claimant or the Organization objected to Claimant's re-employment as waiter on November 11, 1948, but on March 15, 1950, the System Chairman and the General Chairman of the Organization protested Claimant's November 11, 1948, seniority date on the grounds, as finally stated on June 5, 1950, that in assigning Claimant to a steward's position in February, 1948, Claimant was required to relinquish seniority in violation of Rule 4(h) of the Agreement with Local No. 351, which reads:

"4-(h) Employees coming within the Scope of this agreement who are promoted to supervisory or inspecting positions outside the Scope of this agreement shall continue to accumulate seniority on the roster from which promoted."

Based on the facts and circumstances of record, we find the Agreement was not violated.

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 action of Carrier was not in violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of November, 1951.