

Award No. 5612

Docket No. DC-5756

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351, on the property of the Chicago and Eastern Illinois Railroad Company, for and on behalf of Mr. J. B. Canada that he be correctly assigned and paid for all time lost retroactive to the date, he was deprived of his correct assignment.

EMPLOYEES' STATEMENT OF FACTS: On May 5, 1950, J. B. Canada was the recipient of a letter from the Chicago and Eastern Illinois Railroad Company, by said letter J. B. Canada was placed on furlough, J. B. Canada had at that time been in the employ of the carrier since August 24, 1945. That subsequent thereto the carrier posted a bulletin No. 56 in the commissary, listing a position as waiter, that said bulletin expires August 22, 1950.

That J. B. Canada was given temporary work by the carrier, that expired on August 20, 1950 and was not given any work until four days after Bulletin No. 56 expired. It further appears that the carrier assigned one J. L. White, an employee whose seniority dates from January 5, 1946, to the position posted in Bulletin No. 56.

POSITION OF EMPLOYEES: The employees state that the carrier, on May 5, 1950 wrote the employee and placed J. B. Canada on furlough, that the carrier included in the letter of May 5, 1950 a promise to J. B. Canada to adhere to the current agreement between the Employee and carrier, and further the carrier included in the letter of May 5, 1950 the specific paragraph of the current agreement, that the carrier would adhere to and said:

"Your future employment with the company will be governed by the provisions of Article 2, paragraph (j) in agreement with Dining Car Employees Union."

The Article 2, paragraph (j) provided:

"In reducing forces seniority will govern. When forces are increased employees will be returned to service based on seniority and qualification. In applying this rule the Superintendent of Dining Car Service will be the judge as to the employee's qualification."

The employees contend that the carrier is bound to its agreement and if the carrier posted Bulletin No. 56 and assigned an employee of less service to the job as posted, instead of J. B. Canada, that J. B. Canada should be compensated, that the employee relied upon the agreement between the par-

in accord with the provisions of Article II (f), and was assigned in accord with his seniority, leaving Chicago in regular assignment on Train No. 9, December 16, 1950.

The Carrier submits that inasmuch as claimant failed to make application for assignment to vacancy advertised in Bulletin No. 56 in accord with the provisions of Article II (f), his claim is without merit and should be denied.

That Carrier affirmatively states that data contained herein has been handled with the representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was returned to service May 12, 1950, in compliance with Article II (j) of Agreement effective March 1, 1943. He did not apply for position advertised by Bulletin No. 56 as required by Article II (f) of said Agreement. In the circumstances claim will 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 Agreement rules were complied with.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.