

Award No. 5783

Docket No. DC-5409

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES—LOCAL 354

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 354, on the property of the Missouri Pacific Railroad Company, that the Carrier has violated and continues to violate the current agreement by:

1—Refusing to strike the name of Joe Fitzpatrick from seniority roster—and

2—By refusing to reimburse Phil Hardy and others similarly situated to the extent they have suffered as a result of Carrier's assigning Joe Fitzpatrick to perform work Phil Hardy, et al, were entitled to perform.

EMPLOYEES' STATEMENT OF FACTS: Mr. Joe Fitzpatrick entered service on the Missouri Pacific Lines, Dining Car Department on October 8, 1941 as second Cook, promoted to Chef on July 7, 1942. He worked continuously as Chef and second cook until February 1947, when due to curtailment of service he was placed on the extra board.

In May 1949, Mr. Joe Fitzpatrick applied to the Superintendent of Dining Cars for a leave of absence. His request was denied. However, Carrier's Supervisor at Little Rock, Arkansas, entered into an agreement with Joe Fitzpatrick to the effect that he need not protect the extra board for assignments as other extra employees are required to do. With this understanding Mr. Joe Fitzpatrick secured employment at the Albert Pike Hotel in Little Rock and subsequently at the Lafayette Hotel. Mr. Fitzpatrick remained in such employment until July 1950. Carrier did not notify the General Chairman, as required under Rule 13 (Leave of Absence) of the arrangement between the Supervisor of Little Rock and Mr. Joe Fitzpatrick.

Upon Mr. Fitzpatrick's return to service in July 1950, employees who had remained on the extra board during Mr. Fitzpatrick's absence protested Carrier's action in permitting Mr. Fitzpatrick to take assignments while other extra men were available. It is the contention of these extra men that Mr. Joe Fitzpatrick, by remaining in Hotel employment without protecting the extra board for over one year that he should now be treated as a new employee and be given seniority as of the date he returned to service.

The General Chairman took up the protest of the employees with the Carrier's Superintendent of Dining Car Service, who on July 14, 1950 advised the General Chairman that proper adjustment would be made and Mr. Fitzpatrick's name removed from the seniority roster. But, on July 30, 1950,

(j) Grievance cases involving the application and interpretation of the rules of this agreement, when presented in writing, will be promptly handled, however, claims involving monetary consideration, not including any matter connected with or arising out of dismissal or other discipline, will be presented as herein provided within thirty (30) days after the occurrence out of which such grievance arises; otherwise such monetary claims arising out of such occurrences will be waived, except from date such claim is presented in writing to the Superintendent of Dining Cars.

(k) An employee who considers himself unjustly treated shall have the same right of investigation, hearing and appeal, as herein provided, if written request therefor is made to the Superintendent of Dining Cars within ten (10) days of the cause for complaint."

It is the contention of the Employees that Joe S. Fitzpatrick was on the extra board following the force reduction in February 1949. It is the position of the Carrier that had the Carrier called Fitzpatrick for service, it had the right to permit him to lay off provided that in the exercise of its managerial function it chose to do so. There is no rule in the effective agreement which prohibits the Carrier permitting an employee to lay off when called. In the contrary, it has long been the policy of this Carrier to permit employees to lay off when there are other extra or furloughed employees available who may be used. This is in accord with the wishes of our employees. Some agreements contain rules requiring the Carrier to permit employees to lay off under such circumstances upon the request of the employee involved. Such policy is considered essential to amicable employer-employee relations.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties to this dispute on the property.

This claim should, therefore, be denied as being entirely without support under the rule, custom and practice on this railroad and without merit as a matter of equity.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute arises out of Carrier's refusal to strike the name of Joe S. Fitzpatrick from its seniority roster of chefs at Little Rock, Arkansas.

Joe S. Fitzpatrick entered the service of the Carrier at Little Rock, Arkansas, on October 8, 1941, as a Second Cook. On July 7, 1942, he was promoted to a Chef. Due to a decline of passenger traffic the Carrier, in January and February of 1949, discontinued five of its passenger runs out of Little Rock. As a result, in February of 1949, Fitzpatrick reverted to the Extra List. On May 21, 1949, pursuant to Rule 13 of the parties' effective agreement, Fitzpatrick applied for a 90-day leave of absence. This W. F. Ziervogel, Superintendent Dining and Parlor Cars, refused to grant him. On July 8, 1950, Fitzpatrick responded to a call by the Carrier and served it as a Chef.

The Joint Council claims that what happened between February of 1949, when Fitzpatrick went on the Extra List, and July 8, 1950, when he called and served as a Chef, caused Fitzpatrick to lose his seniority. On its first protest to the Superintendent of Dining and Parlor Cars the Superintendent verbally so agreed but later changed his mind and refused to strike Fitzpatrick from the seniority roster.

There is no evidence that Fitzpatrick was on leave of absence during this period. Consequently Rule 13 of the parties' agreement, and its requirements have no application.

Superintendent of Dining and Parlor Cars W. F. Ziervogel's verbal agreement to strike Fitzpatrick from the seniority roster was done without the requirements of Rule 17 of the parties' agreement having been complied with and is therefore without effect insofar as Fitzpatrick is concerned.

What actually happened after the passenger runs, to which Fitzpatrick was assigned, were pulled off and he reverted to the Extra List in February of 1949, is as follows: he left his name and address with J. M. Glass, Inspector of Dining and Parlor Cars at Little Rock; he entered private employment in the hotels of Little Rock; when called he responded but asked to lay off; if junior employees on the Extra List were available and willing to serve Carrier granted this request, which was in keeping with Carrier's policy in regard to men on the Extra or Furloughed List and in keeping with its practice at that time; and this continued, insofar as Fitzpatrick was concerned, until July 8, 1950, when he was called, responded, returned to and performed active service.

As has been often said Carriers retain all rights to conduct their business except they must do so in accordance with the contract provisions of their agreements made with their Employees. We find nothing in the parties' effective agreement, nor is any provision thereof pointed out, which prevented or prohibited this Carrier from doing what it did in handling the employee relationship of Fitzpatrick.

It may be, as is suggested in the record, that Fitzpatrick, in view of his seniority rights, could have obtained work with the Carrier by placing himself on the extra board at St. Louis or other points on the Carrier, but apparently he did not care to do so. There is nothing pointed out in the parties' agreement that required him to do so. In the absence thereof he would not lose his seniority rights by failing to do so.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 23rd day of May, 1952.