Award No. 6616
Docket No. DC-6687

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 516, for and on behalf of T. Needham, Third Cook; W. Wade, Waiter, and others similarly situated on the property of the Great Northern Railroad Company; that they are compensated for all time lost as a result of being assigned under carrier's bulletin Nos. 7 and 8.

That the carrier be required to pay claimants and all others similarly situated for the hours between 12:00 M. and 3:00 P.M. for each round trip made under the schedules as set up in Bulletins Nos. 7 and 8, said time being spent in Savanna enroute from St. Paul to Seattle.

EMPLOYES' STATEMENT OF FACTS: Claimants state that on January 29, 1953 carrier posted two bulletins, Nos. 7 and 8 which were as follows:

BULLETIN NO. 7

Effective with departure of train #44 St. Paul Station February 1st, 1953, Waiter #3 and 3rd cook of Ranch Car, The Empire Builder, will be given assignment St. Paul to Savanna, returning on #49-1 to Seattle, thence on #2 to St. Paul, according to the following working schedule:

1st	day	Tr.	#44 to Savanna		6:30 AM to 12:00 M	5'30"
1st	"	"	#49-1 "	Enroute	3:00 PM to 10:00 PM	7'00"
2nd	"	"	#1	"	6:00 AM to 10:00 PM	16'00"
3rd	"	"	#1 Arrive Seattle		6:00 AM to 11:00 AM	5'00"
3rd	"	"	#2 Report time-then #2		2:00 PM to 10:00 PM	8'00"
4th	"	"	#2 Enroute		6:00 AM to 11:00 PM	17'00"
5th	"	"	#2 Arrive St. Paul		6:00 AM to 7:00 AM	1'00"

Assignment will require 8-waiter and 8-3rd Cooks to fill the line.

5th, 6th, 7th, 8th, layover days—report 6:30 A.M. 9th day.

having the right to determine crew personnel, it has the right to rearrange assignments as it deems necessary at any time.

Under Bulletins Nos. 7 and 8, the Carrier instead of moving the two employes under Bulletin No. 7 and the two employes under Bulletin No. 8 to Chicago, decided that it would be more advantageous to the service of the Dining Car Department to have these employes leave their trains at Savanna and return on our dining car equipment out of Savanna on the same day. The employes on this assignment, instead of being required to layover in Chicago for a 23-hour period, only had a layover in Savanna of three hours, which was materially beneficial to them. In this movement the employes involved had no expenses as there would be no lodging or meals at Savanna. There would be, however, meals if the employes were moved into Chicago with the balance of the crew.

There is no rule in the current agreement that states that dining car and ranch car crews shall consist of a definite number of employes nor is there any rule that provides that the hours of an assignment cannot be changed. Under the current agreement there is no so-called unit rule and the Carrier at all times has the right to assign the members of a crew to its equipment and to change that assignment by bulletin.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employe Representatives and made a part of the claim.

(Exhibits not reproduced).

OPINION OF BOARD: This claim will have to be denied for two reasons: 1. It was not handled on the property as required by the Railway Labor Act, Section 3, First (i), and the Rules of Procedure of this Board; 2. The Organization's claim is based on "past practice" of the Carrier, and there is a complete failure on the part of the Organization to prove any such "past practice."

While the Organization states in its Ex Parte Submission that, "This matter has been handled on the property", the only thing that appears in the record suggesting it was is a letter from the Assistant to Vice President of the Carrier addressed to the General Chairman of the Organization acknowledging the holding of a conference "at which time you brought up some questions about certain changes recently made in assignments of dining car employes. * * * You were advised by Mr. Deleen that he has been making a check as to the practicality of this release and that upon the completion of the same he will be in a better position to consider your complaint."

No attempt apparently was made by the Organization to follow through upon receipt of the above letter.

As to the second reason for denying the claim, it appears that after the Carrier filed its "Reply to position of Employes", in which the Carrier pointed out that under its past practice the list of terminals relied upon by the Organization had "no application to assigned runs" of which the run involved in this case was one, the Organization has not attempted to refute that contention, for the apparent reason, and we believe a valid reason, that it could not be successfully done.

The claim is 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 Employes involved in this dispute are respectively Carrier and Employes 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
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 6614.

Docket No. TD-6616

NAME OF ORGANIZATION: American Train Dispatchers Association

NAME OF CARRIER: Missouri Pacific Railroad Company

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Carrier has asked for an interpretation of the following language in said award: "Compensation to claimant be in the amount for time lost at the scheduled rate of pay of the position less such wages as he may have received from other sources during such period."

As far as the law of the case is concerned we are willing to accept the language used in Interpretation No. 1 to Award No. 5191. We say that for the reason that it is admitted now that all the Claimant earned in outside employment was $10 and the Carrier states it "realizes that a man of his age and with his physical impairment might have had some difficulty in finding employment in other industry."

That leaves, in the language of the Carrier, "The sole question before us is—Did the Claimant use reasonable diligence to obtain other employment in order to minimize damages?"

This question must be answered in the negative. The record shows that when on August 10, 1952, Mr. Christy, Superintendent of the Coffeyville, Kansas, office, offered to try to arrange to get Claimant a non-telegraph job, Claimant stated that rather than do that he would take his pension.

It is also to be noted that Claimant did not lose his seniority rights as a telegrapher, by being disqualified as a dispatcher. A position as Agent-restricted operator was bulletined at Vernon, Kansas, in Claimant's seniority district which he could have bid on in September, 1952. Claimant said he did not know about it, but it seems strange that he did not show enough interest in his seniority rights to keep in touch with what jobs were open to him. He owed that duty. We cannot agree with Award 6239 which holds that an employe is under no obligation to bid for a lower classified job in the mitigation of damages to his employer.

The language in our Award (6614), "such wages as **he may have received,**" contemplated and was intended to invoke the common law rule of the mitigation of damages and as so applied in the instant case, Claimant is entitled only to pay at his trick dispatcher's rate from August 10, 1952 to September 25, 1952 and from September 25, 1952 to the difference in pay for what he could have earned on the Vernon job and what he would have

received on the job from which he was disqualified, less the $10 admittedly earned. See Award 6342.

Referee Norris C. Bakke, who sat with the Division as a member when Award 6614 was adopted, also participated with the Division in making the interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. I. Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1954.