

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of two (2) dining car stewards, Northern District, standing to be used in Special Train, "Financial Analysts'," operating Oakland-San Francisco, thence via Los Angeles to Houston, Texas, May 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, 1952, for the earnings they would have received if they had been used on said train, in addition to all other compensation received for service performed on those dates.

JOINT STATEMENT OF FACTS: On May 6, 1952 regularly assigned Southern District dining car Stewards Joseph De Gregori and Jack Grannatt were called to report to the Los Angeles Commissary for service on dining cars Nos. 10204 and 10205, which were to be used in train identified as Financial Analysts' Special, from San Francisco, California to Houston, Texas. Steward Grannatt reported at 11:00 A.M. and Steward De Gregori at 12:30 P.M. May 6, to the Los Angeles Commissary where they received instructions, reports, and other information in regard to the Financial Analysts' Special, after which they departed Los Angeles deadhead on Train No. 57 to Oakland. On arrival at Oakland May 7, Stewards De Gregori and Grannatt took charge of stocking the two diners, and after that had been accomplished, the diners were moved deadhead to San Francisco and placed in the Financial Analysts' Special at that point.

On May 8, 1952 the Financial Analysts' Special, with diners in charge of Stewards De Gregori and Grannatt, departed San Francisco operating as train Second 94 and arrived Los Angeles on May 9. On May 10, the Financial Analysts' Special laid over at Los Angeles, and on that date Stewards De Gregori and Grannatt replenished the supplies of the diners. On May 11, the Financial Analysts' Special departed from Los Angeles and arrived at Houston, Texas on May 13. Stewards De Gregori and Grannatt departed Houston, Texas deadhead on Train No. 5 May 13, and arrived at Los Angeles May 15.

For service performed May 6 to May 15, 1952, both dates inclusive, Steward De Gregori was allowed 111 hours, 30 minutes, and Steward Grannatt was allowed 114 hours.

Claim was filed in behalf of the two (2) dining car stewards, Northern District, standing to be used on Special Train, "Financial Analysts'," operating Oakland-San Francisco, thence via Los Angeles to Houston, Texas, May 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, 1952, for the earnings they would have received if they had been used on said train, in addition to all other compensation received for service performed on those dates.

The dining car service required on the Financial Analysts' Special was not that customarily furnished—it necessitated the removal of the regular dining car equipment, the replacing of such equipment with one large table in each diner, and providing the finest table appointments and service. It further required of stewards service essentially that of a butler. The carrier in selecting the stewards for the Financial Analysts' Special gave consideration to experience, tact, disposition, discretion, capacity to handle people, and suitable physical presence. The carrier considered all the available dining car stewards and selected Stewards De Gregori and Grannatt as the stewards having sufficient fitness and ability to provide the meticulous and personalized service required on the Financial Analysts' Special.

The carrier's action in using Stewards De Gregori and Grannatt was not arbitrary nor capricious; it was taken only after giving consideration to the fitness and ability of the stewards available. In this connection, the attention of the Board is directed to Awards 4040, 4687, 4785, 5966 and 6028, which are a few of many awards wherein it has been recognized by this Division that the carrier has the right to determine fitness and ability, and that this Division does not have the right to substitute its judgment for that of the carrier. That the organization, as well as the carrier, is cognizant of this right is evident by the agreement provisions hereinbefore quoted; also, by the preamble of the current agreement, which reads:

"The obligation that rests upon the Management to provide and the Employees to render honest, courteous and efficient service is recognized.

"A spirit of co-operation between the Employees and the Management is essential in providing a service that is pleasing and efficient; both parties should so conduct themselves as to promote that spirit. The responsibility for success rests equally with the Management and the Employees." (Emphasis supplied.)

The carrier asserts that it has conclusively established that the handling which has given rise to the instant claim is specifically provided for in Rules 8 and 10(b) of the current agreement; that the use of Stewards De Gregori and Grannatt was not arbitrary, capricious or biased; that there is no agreement provision which even by implication, supports the instant claim and, therefore, respectfully submits that it is incumbent upon the Division to deny the claim.

As stated above, carrier believes it has conclusively established that there is no valid basis for the claim in this case. However, even if there were a valid basis, the claim presented would not be a proper claim because in that event the claimants would be entitled to payment only of the difference between what they earned and what they would have earned, if any, had they been used to perform the service in question.

(Exhibits not reproduced.)

OPINION OF BOARD: Based on the facts as shown in the record, the two claimants are entitled to be made whole for the named dates, i.e., for earnings they would have received if they had been used on the Special, less what they did earn in other service during the period May 7 to 16 inc., 1952.

This opinion is based upon the facts and circumstances of record in this particular case and is not to be cited as a precedent where different facts and circumstances are involved.

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 claimants are entitled to be made whole in accordance with the Opinion.

AWARD

Claim sustained to the extent shown in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1955.