# Award No. 7868
# Docket No. DC-7575

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Livingston Smith, Referee**

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## PARTIES TO DISPUTE:

## JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

## CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 385 for and on behalf of I. R. Richardson, buffet attendant, on the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he be compensated in an amount equal to the amount of time received by A. G. Weber as buffet attendant, from February 3, 1954 to March 23, 1954 inclusive, as and for net wage loss suffered by said claimant due to said claimant being improperly furloughed on February 3, 1954 in violation of Schedule Rule 6 (f) of current agreement.

**EMPLOYES' STATEMENT OF FACTS:** Under date of February 3, 1954, carrier furloughed claimant:

"Account reduction in force due to decline in business . . ." (Employes' Exhibit A).

Under date of March 23, 1954, carrier recalled claimant from furlough (Employes' Exhibit B). The recall from furlough directed claimant to report to carrier's dining car superintendent's office to be placed on the active list for duty and be available for extra work coming up.

On the date of claimant's furlough on February 23, 1954, claimant held seniority date as buffet attendant of February 1, 1948 (Employes' Exhibit C, No. 24). During the entire period of claimant's furlough, A. G. Weber was employed by carrier as buffet attendant. Mr. Weber's seniority date as buffet attendant is February 21, 1948 (Employes' Exhibit C, No. 25). Prior to his furlough on February 23, 1954, Claimant had been employed by carrier as a buffet attendant.

Schedule Rule 6 (f) of the current agreement insofar as applicable to the instant claim provides:

**"When forces are reduced, seniority will govern."** (Emphasis supplied.)

The balance of Schedule Rule 6 (f) provides:

"When forces are increased, employes will be returned to the service in accordance with their seniority provided they file their

When his status as a furloughed man terminated he became an extra board man and as such he came under Section (k) of the Memorandum Agreement.

There is nothing in the schedule rules which provides for payment of full wages to a furloughed employe as contended by the employes in this case. There are numerous Third Division awards which have consistently held they will not read in or create a rule where none exists. See, for example, Third Division Awards Nos. 4585, 6096, 6107.

Paragraph (k) of the Memorandum Agreement dated September 11, 1952 (Carrier's Exhibit A), is the only understanding between the parties as to payment to be made to an employe who is "run around". The Carrier contends that paragraph is applicable here, but if not, as the employes contend, then there is no rule that provides any payment in this case as there is no other provision in existence between the parties which stipulates the payment to be made to an employe who is run around. As we have stated above, your Honorable Board has often held it is not your function to write new rules.

The carrier while the dispute was on the property followed the only procedure available to it under the schedule and agreements in effect by paying the employe for 16 hours under Paragraph (k) of the Memorandum of Agreement.

Had Richardson not been furloughed but instead remained on the extra list during the period of time Weber performed the service involved, Richardson would have been paid no more than the runarounds he actually was paid. Surely it would be unreasonable and unjust to hold that a furloughed employe would be entitled to more than an extra employe under the circumstances. For these reasons we submit the claim should be declined.

All data contained herein has been made known to the employes, and conference has been held on the property.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant here seeks reparations equal to the amount received by another employe, one A. G. Weber, who, it is alleged, was improperly assigned to perform work amounting to four round trips, which Claimant should have been assigned within the meaning of Rule 6 (f) which reads as follows:

> "When forces are reduced, seniority will govern. When forces are increased, employes will be returned to the service in accordance with their seniority provided they file their name and address with the Superintendent or designated officer at the time of reduction of forces, advise promptly of any change in address and return to service within ten (10) days after being notified by mail or telegram sent to the address last given; failure in this respect will terminate seniority. Employes who, because of reduction in forces, perform no service for a period of one (1) year will forfeit seniority."

The Organization took the position that Claimant was improperly furloughed on February 3, 1954, within the meaning of the above quoted rule for the reason that there was obviously Buffet Attendant work to perform. It was pointed out that Claimant, having greater seniority as a Buffet Attendant than employe Weber who was permitted to perform same, should have been given the assignment. It was further asserted that Memorandum of Agreement of September 11, 1952, pertained to extra employes and could not properly apply to Claimant.

The Respondent pointed out that the Memorandum of Agreement bearing date of September 11, 1952, and the extra Board Agreement of January 26, 1954 was controlling here inasmuch as the agreement had the effect of amending and modifying Rule 13, as it applied to extra men and extra work,

and as such became in effect a special rule; controlling over Rule 6, a general rule. It was asserted that the Extra Board specifically covered both Buffet Attendants and Assistant Buffet Attendants as a common group and permitted the assignment of employes in either classification to available extra work on an interchangeable basis. It was pointed out both the Claimant and employe Weber were extra employes working off the extra list, and that since employe Weber held greater Assistant Buffet Attendant Seniority than he (Weber) was properly assigned this extra work.

The record is clear as to revelant facts. At the time he was furloughed Claimant was performing Assistant Buffet Attendant work. While Claimant was Junior from the point of Seniority as an Assistant Buffet Attendant to employe Weber he was Senior to him (Weber) as a Buffet Attendant. The work involved was that of a Bar Attendant. The Claimant was unquestionably in a furloughed status and not in an extra employe status during the period of time in question. That this is true is evidenced by the Furlough Notice of February 3, 1954 and the Respondent's communication to General Chairman Hamilton reading in part as follows:

> "As a furloughed employe Mr. Richardson does not have any relationship with the carrier until such time as he is recalled from furlough, therefore I cannot understand your time claim."

For this reason we cannot agree that the Claimant was at the time in question an extra employe working off the extra list. The Claimant could not have been an extra employe and a furloughed employe at one and the same time.

It is the opinion of the Board that the seniority rights of the Claimant as protected by Rule 6 were not properly recognized when the Respondent denied him the work in question. The Memorandum of Agreement dated September 11, 1952, or the operation of the Joint Buffet Attendant—Assistant Buffet Attendant Extra Board, as it pertains to extra employes of each classification is not applicable to the facts and circumstances of this particular case.

We are of the opinion that this claim is meritorious and should be allowed, less credit for payment made Claimant by Respondent in connection therewith.

**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 violated the effective Agreement to the extent indicated in the above opinion.

AWARD

Claim sustained, less amount previously paid Claimant.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 9th day of May, 1957.