

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 370 on the property of the New York Central Railroad Company, for and on behalf of Walter Duncan that he be restored to service as a dining car waiter with seniority and vacation rights unimpaired and that he be paid retroactively for all net wage loss suffered by him since September 10, 1956 account his dismissal from Carrier's employment in violation of current agreement and in abuse of Carrier's discretion.

OPINION OF BOARD: We are here concerned with those sections of Rule 4 of the existing Agreement, between the parties, which apply to employees (specifically waiters) on the extra board.

The applicable sections of Rule 4 are as follows:

"4 (g) (4) Employees on the extra board shall be run first-in, first-out."

"4 (g) (14) It is the responsibility of extra employees to be available for service when called. Any extra employee not available when called will be dropped to the bottom of the list. An extra employee failing on three consecutive occasions on separate calendar days to be available when called shall be dropped from the board until he personally reports his availability to the Dispatcher."

"4 (g) (18) Extra employees must accept assignments in accordance with their standing on the list. When an extra qualified employee is available and is not called in his turn and is run around through no fault of his own, he will be allowed 4 hours' pay without changing his standing on the extra list. Payment will be made only to the employee standing first out who is thus run around."

Claimant Duncan was charged by Carrier's Superintendent Dining Service T. H. Byrne as follows:

"You are hereby notified, in accordance with the provisions of agreement between this Company and its employees represented by Hotel and Restaurant Employees' and Bartenders' International Union Local 370, to report at Room 219, 260 East 161st Street, New York, N. Y., at 11:00 A.M., Daylight Saving Time, Friday, September 7, 1956, for hearing with respect to the following charge:

"Refusing assignment, train 167, August 24, 1956. New York, N. Y."

Said charge was predicated on this letter sent to Superintendent Byrne by Carrier's Dispatcher, Michael A. Galoppo:

"This is to inform you that Waiter W. Duncan received a reporting time assignment by 'phone on Friday, August 24, 1956, to report at 12:00 Noon at Mott Haven Yards for a train assignment. Said waiter reported to the Dispatcher's window about 11:35 AET, making himself available for work. He was called for a train assignment about 12:00 Noon and was given an assignment slip and told to report to GCT for train 167, DL 631. Mr. Duncan refused this assignment saying that he could not accept this work because it was not convenient for him to do so. I informed him to wait until we could consult with Mr. Byrne on this matter."

While the Organization admits, in the first part of its original submission to this Division, that "Claimant refused this assignment" and "that Claimant never accepted the assignment," it argues later that:

"It is obvious that the word of the Dispatcher as reported on page 6 of the transcript of the hearing herein, which is binding on both parties, clearly establishes that claimant did not personally accept the assignment at the time his turn was reached and therefore could not be considered available for service by virtue of the clear and specific meaning of Rule 4 (g) (16)."

Rule 4 (g) (16) provides as follows:

"Employees on the extra board must leave their addresses and telephone numbers with the Crew Dispatcher. The employees can be called by telephone, telegram or by personal contact. In order to be considered available for service, an extra employee must personally accept the assignment at the time his turn is reached and he is called for extra work. Word of the employee dispatching crews in this respect shall be binding on all parties." * * *

It is argued on behalf of Carrier that:

"There is no dispute here concerning the fact that Claimant actually refused to accept the assignment to duty slip for service on Train 167 on August 24, 1956, after having personally accepted the assignment to report for duty when called, and having actually reported therefor. Claimant's refusal is conceded by the Organization (p. 5); is established by the testimony of Dispatcher Galoppo (p. 30) and Superintendent Byrne (p. 62), and, most important of all, was

admitted by the Claimant himself when he was asked to repeat the conversation he had with Superintendent Byrne immediately following his refusal (p. 61):

"* * * I said, "Well, I just refused an assignment * * *."
He said, "Well, you cannot refuse no assignment." I said
"I just refused an assignment." * * *."

Organization argues:

"It then appears that the admitted facts are that claimant had not accepted the assignment on Train 167 and that he had been run around in the assignment of an employee who followed him on the extra board list prior to his being assigned; and when these facts are applied to the contractual provisions here controlling, it is obvious that the Carrier has violated the agreement in dismissing claimant, wholly apart from its abuse of discretion in exacting the severest penalty within its command for a relatively minor infraction. * * *"

But the fact remains that Claimant was obligated (Rule 4 (g) (18)) to accept his assignment from the Carrier; and then, if he felt he was run around or was otherwise discriminated against, he could have filed his complaint or grievance against the Carrier in accordance with the Agreement. This he did not choose to do.

The claim will be denied. Award 4886 (Carter).

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November, 1958.