Award No. 9940
Docket No. DC-9610

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL, DINING CAR EMPLOYEES, LOCAL 351

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Joint Council Dining Car Employes Local 351 on the property of the Chicago and Eastern Illinois Railroad Company for and on behalf of Cook D. Haddox and other employes similarly situated that Carrier has accorded a seniority date to Carey Dixon in violation of the effective agreement and that claimants be reimbursed for any net wage loss sustained by reason of Carrier according incorrect seniority date to Carey Dixon in violation of the effective agreement.

EMPLOYES' STATEMENT OF FACTS: Under date April 4, 1956 Organization's General Chairman protested Carrier assigning seniority date of February 19, 1953 as the seniority date of Cook Carey Dixon. (Employes' Exhibit A). On May 22, 1956 Carrier's Superintendent Dining Cars denied the claim as submitted by the Organization. (Employes' Exhibit B). Under date May 29, 1956 Organization's General Chairman appealed the denial of the instant claim to Carrier's Assistant Chief Personnel Officer, the highest officer designated on the property to consider such appeals. (Employes' Exhibit C). Under date July 6, 1956 Carrier's Assistant Chief Personnel Officer denied the appeal. (Exhibit D).

The facts in this claim are not in dispute. They are as follows: On February 19, 1953 Carey Dixon was employed in Carrier's dining car department as a dining car cook. He worked in that employment for a period of 40 days. At the end of the said 40 day period, Carey Dixon left his employment in Carrier's dining car department and accepted employment on the private car of an officer of the Carrier. On or about January 16, 1956 Carey Dixon was again employed as a dining car cook in Carrier's dining car department. On March 5, 1956 Carrier considered that Carey Dixon had completed 90 days probationary period as an employe of its dining car department and assigned him a seniority date of February 19, 1953, the date upon which he was first employed in Carrier's dining car department.

POSITION OF EMPLOYE: The effective agreement between the parties effective December 1, 1951 is the current agreement between Carrier and Organization. This agreement being Schedule No. 3 is on file with this Board and is incorporated herein by reference. The instant claim is controlled by Rule 1(c), Rule 6 and Rule 8, Section 1(a) and 1(c). For the convenience of the Board those rules are set out in full as follows:

cise his seniority rights and place himself in a position of his choice Carrier had no alternative but to comply with his request.

Your Division has consistently held that seniority is probably the greatest benefit accruing to the employe under a contractual labor agreement. It is Carrier's sincere desire to respect those rights. It must be borne in mind, however, that other than its desire to properly apply all agreement rules protecting the employe's seniority, it is of little concern to Carrier as to which employe fills a specific position or what seniority rights he may possess. It is imperative that in the application of these rules, no injustice shall be condoned.

In summation Carrier submits that there are two separate and distinct issues requiring determination: (1) the question of proper seniority to be accorded Cook Dixon; (2) the monetary claim presented on behalf of Claimant Haddox.

With respect to the question of seniority which is properly before the Board; Carrier submits that its interpretation and application of agreement rules in permitting Cook Dixon to retain and accumulate seniority is fully in compliance with agreement rules and any decision to the contrary would be a miscarriage of justice.

With respect to the monetary portion of the claim here before the Board Carrier submits it is entirely invalid—clearly outlawed by the provisions of Article V, Paragraph (a) of Agreement dated August 21, 1954 and by provisions of the Railway Labor Act that requires handling all aspects of claims on the property before submission to the National Railroad Adjustment Board. In the event it should be held that the monetary aspect of the claim is properly before the Board (and Carrier asserts that it is not) it must not be overlooked that during the period in question (May and June 1956) Claimant Haddox did in fact earn considerable in excess of the compensation paid C. Dixon. Further, when Claimant Haddox voluntarily elected to relinquish his assignment on Trains 93 and 54 and place himself on the extra board, the period of liability, if any, was thereby terminated.

Carrier submits that only a denial award is in order.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: Petitioner contends that the employment rights of Claimant and other Dining Car employes similarly situated have been prejudiced by the manner in which an employe named Dixon acquired seniority.

There is no controversy regarding the facts. Dixon first went to work for the Carrier on February 16, 1953, as second cook in the Dining Car Department. Forty days later, on May 1, 1953, he was appointed Business Car Steward, a position not covered by the Carrier's Agreement with Petitioner. He continued in that capacity until January 1, 1956, and then returned to the Dining Car Department as second cook. The point of contention is that when both Claimant and Dixon thereafter applied for a bulletined position in the Dining Car Department, it was awarded to the latter on the basis of seniority acquired February 16, 1953, the day he first entered the Carrier's employ.

Petitioner insists that Dixon's seniority standing should not date back to February 16, 1953, since he failed to work ninety consecutive days at that time in a position within the scope of the Agreement and thus did not acquire

seniority until 1956. It points to Section 1(a) of Rule 8 which provides that "New employes shall not establish seniority until they have actually worked ninety (90) days. When established, seniority shall date as of the first day service was performed." That rule, however, does not require specifically or by fair inference, that the ninety day period be continuous and no such requirement is contained in any other provision of the Agreement. Neither the last paragraph of Rule 9 nor Rule 13A is helpful in that regard since the former relates to reductions in force and the latter to leaves of absence, matters that are not involved here.

Considering the record in its entirety, we do not find that Petitioner has sustained the burden of establishing its case and we will deny the claim.

In view of our findings, it is unnecessary to consider several procedural points that have been raised by the Carrier other than to point out that the Board is satisfied that it possesses jurisdiction in this matter.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1961.