

Award No. 10286

Docket No. DC-10032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union Local 370 on the property of Delaware and Hudson Railroad Corporation for and on behalf of C. Tigner, R. Smith, T. Keats and other employees similarly situated who are released at Montreal (Quebec), a turn around point, and not furnished sleeping quarters be compensated retroactively for moneys expended in furnishing own sleeping accommodations.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 26, 1956, Organization's General Chairman lodged the instant claim with Carrier's Superintendent Dining Service (Employees' Exhibit A). The material facts relevant to the instant claim are that since, at least, from the month of July, 1954, Carrier has failed to provide crew sleeping quarters for Dining Car Crews, Trains 9 and 10 when they are released at Montreal, Quebec. Montreal is, and has been, the turn around point for run of Trains 9 and 10, Whitehall, N. Y. to Montreal and return, at all times material to the instant claim.

Past practice on this property has been to furnish crew sleeping quarters when crew personnel are released at cut-out or turn around point. In fact, on this very run, crew on Trains 9 and 10 were furnished sleeping quarters at Rouse's Point, New York, when this run was cut out at that point and prior to the run being turned around at Montreal, Quebec. The further fact is that the home terminal of clamants' and other employees similarly situated is Albany, N. Y. Montreal has never been designated by Carrier as home terminal for this run to employees involved except as defense to the instant claim.

Carrier must admit the facts that it maintains no commissary, no dining car supervision, no check-in nor check-out points at Montreal, Quebec. Carrier must further admit the past practice of maintaining an annual summer run from New York, N. Y. to Montreal, Quebec and return for dining car crews. Crews employed on these annual summer runs are furnished sleeping quarters at Montreal, Quebec.

OPINION OF BOARD: The Carrier maintains this claim should be dismissed because it was not appealed to the Manager of Personnel, Carrier's highest officer designated to handle claims and grievances, in accordance with Section 3(i) of the Railway Labor Act. (The Carrier has withdrawn other procedural contentions based on time limits established by the 1954 National Agreement, since Dining Car Employee's Union was not a party to that Agreement.) Section 3(i) provides, in relevant part:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . ."

This Section, clearly, requires that a grievance, to be properly submitted to the Adjustment Board, must first have been processed "in this manner", e. g. up to the Carrier's Chief Operating Officer designated for that purpose.

Was that done in the instant case? The following chronological resume contains information necessary to answer this question:

July 1949. In an exchange of correspondence between the Union's General Chairman and Carrier's Manager of Personnel it was made clear that the Manager of Personnel was "the last officer on the property through whom claims are progressed."

July 1954. Carrier failed to provide new sleeping quarters for Dining Car Crews, Trains 9 and 10, when they were released at Montreal, Quebec, according to the Union. (This alleged violation of a "past practice" continued thereafter, the Union says.)

April 1956. Claim for retroactive compensation, based on Carrier's failure to provide Montreal sleeping quarters, submitted by Union's General Chairman D. Washington to Carrier's Superintendent of Dining Service F. P. Miller. This claim was denied within the following month.

May 1956. The Union's General Chairman appealed Miller's decision to C. M. House, Manager of Personnel.

July 13, 1956. Manager of Personnel E. G. Young advised General Chairman Washington that the Union's claim should be handled with General Transportation Superintendent K. E. Miller "prior to appeal to this office."

July 17, 1956. General Chairman Washington appealed Dining Service Superintendent Miller's decision to General Transportation Superintendent K. E. Miller, stating in part: "Mr. Young advising us on July 13, 1956, we must appeal to you before the subject would properly be before him."

September 1956. General Transportation Superintendent Miller denied the appeal.

March 1957. General Chairman Washington wrote General Transportation Superintendent Miller:

"We are of this date forwarding to the Joint Council of Dining Car Employees, your denial of September 11, 1956 of our claim for sleeping quarters of Dining Car Personnel cut-out at Montreal, Quebec.

"All attempts to resolve this dispute on the property having failed, we now propose that our Council submits same to the National Railroad Board of Adjustment Third Division for opinion."

October 1957. Secretary-Treasurer R. W. Smith advised the Adjustment Board of the Union's intention to file an Ex Parte Submission within thirty days.

There can be no doubt, in light of the above facts, that the Union was aware that Carrier's Manager of Personnel was its highest officer on the property designated to consider appeals (despite the union's statement in its Ex Parte Submission that the General Transportation Superintendent was the highest officer). Specific acknowledgment of this fact is found in the General Chairman's July 17, 1956 letter. There is also no doubt concerning the union's failure to appeal General Transportation Superintendent Miller's denial to the Carrier's Manager of Personnel.

The Carrier argues that this failure bars the present claim. On the other hand, the Union contends that the Carrier's failure to reply or file any protest with the Organization, after receiving the General Chairman's March 1957 letter, must be construed as silent agreement that the case had been handled to conclusion on the property in the usual and ordinary manner.

Under other circumstances we might well hold that Carrier's failure to inform the Union that it had skipped a step constituted a waiver. This conclusion would be particularly apt were there specific time limits involved. Yet here, we note: (1) The Union had been notified, in writing, within three months of filing its original claim that the Carrier's Manager of Personnel was its highest appeals officer; (2) This notification was not given in connection with some other matter, but as part of the processing of this very claim; (3) Since there are no contractual time limits for appeals, the Union had full opportunity to appeal at any reasonable time to Carrier's top ranking appeals officer.

Under the circumstances, we do not believe this Carrier had continuing responsibility for advising the Union what procedural steps should be taken in order to properly advance its claim. Management justifiably assumed that the Union had full knowledge of procedural requirements and, therefore, cannot be reasonably charged with waiving its right to raise a procedural question when the Union fails to proceed in a proper manner.

This claim, then, will be dismissed without consideration of the "merits", since the Union failed to comply with Section 3(i) of the Railway Labor Act before submitting its claim to this Board.

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 for reasons stated in the Opinion the claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1961.