

Award No. 10323

Docket No. DC-9922

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 351

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Employees Union Local 351 on the property of the Erie Railroad Company and on behalf of Roy Johnson, that he be paid the difference in net wage loss suffered by him since February 14, 1953 account Carrier's assigning junior employe in violation of terms and conditions of existing agreement.

EMPLOYEES' STATEMENT OF FACTS: Under date of March 7, 1953, Organization submitted the instant claim to Carrier's Superintendent Dining Car Service, (Employees' Exhibit A). This claim was denied under date of March 12, 1953 by that official of the Carrier (Employees' Exhibit B).

Pursuant to the agreement, the denial of the claim was appealed to Carrier's Assistant Vice President, the highest officer designated on the property to consider such appeals (Employees' Exhibit C). Under date of April 15, 1953, the claim was denied on appeal (Employees' Exhibit D). However, under date of May 7, 1953, Carrier's Assistant Vice President suggested a conference be held on the instant claim (Employees' Exhibit E). The request was acceded to by Organization under date of May 13, 1953 (Employees' Exhibit F).

Conference suggested was held on October 19, 1953, and as a result claim was again denied (Employees' Exhibit G). Thereafter, correspondence and conferences occurred between Organization and Carrier relating to the instant claim (Employees' Exhibits H, I, J, K, L). Final handling on the property occurred under date of June 29, 1956 when the claim was again denied on appeal by the highest officer designated on the property to consider such appeals (Employees' Exhibit M).

The record indicates that the facts are that on February 14, 1953, claimant arrived at Jersey City on Train 6 before noon that day. At that time there existed an assignment departing Jersey City on Train 5 later that day to Chicago, returning Jersey City Train 2 February 16, 1953. Carrier failed and neglected to notify claimant of this assignment at a time when claimant was ready and available for service.

In violation of the agreement, Carrier assigned Robert Arnold who was not an employe of the Carrier (Employees' Exhibit B) to this run. At the time

At not time during the handling on the property did the General Chairman or the claimant furnish proof that the latter was available, ready and willing to accept the assignment. It would seem that if there was any proof to support Petitioner's allegation, it would have been a simple matter to have furnished it to the Carrier during the conference on October 19, 1953. But in any event prior to submitting the claim to this Board, as required by the Board's Circular No. 1 issued October 10, 1934. Award 2556.

The burden of establishing facts sufficient to require or permit the allowance of a claim is upon the person who seeks its allowance. Awards 3523, 5040, 6018, 5976, 6359, 6114, 7362. Since Petitioner has failed over a period of more than three years to furnish any proof whatsoever to support its contention, it is fairly obvious that no competent proof exists.

The Carrier has shown that the claimant was not available to take the assignment on train No. 5 departing Jersey City on the evening of February 14, 1953. Further, that under the facts and circumstances, Carrier's action in using Mr. Arnold did not violate any provision of the applicable Agreement.

Therefore, the Carrier submits that the claim is without merit and should be denied.

All data herein have been presented to or are known to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: There appears in the record a misunderstanding by the parties as to the status of the claim while in process on the property.

The record discloses evidence of an additional conference and further correspondence after the misunderstanding was corrected, after the final declination alleged by the Carrier on October 26, 1953.

In view of the circumstances involved, we do not believe that the time elapsing before appeal to this Board was unreasonable.

The claim, however, must fail for lack of proof. More assertions of the Claimant are not sufficient to substantiate a claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.