

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 370 for and on behalf of Preston James, Jr., Buffet Lounge Attendant-in-Charge on the property of the Pennsylvania Railroad Company, that he be accorded seniority date in the Buffet Lounge Attendant-in-Charge classification dating from February 15, 1955 and be compensated for net wage loss suffered by reason of Carrier's violation of the effective agreement in awarding position of Buffet Lounge Attendant-in-Charge on said date of Junior employe.

EMPLOYEES' STATEMENT OF FACTS: The records of the Carrier will show that claimant entered the service of the Dining Car Department as a Stationery Pantryman on July 1, 1942 at New York. On August 16, 1954, claimant transferred to St. Louis and worked in that classification. It also must be admitted as a fact by Carrier that on August 12, 1953, claimant qualified as a Buffet Lounge Attendant-in-Charge. On March 3, 1954 he was employed by Carrier as a Buffet Lounge Attendant-in-Charge, Car 1154, Train 131, cutting checks opening with A91-51-66 and closing with A91-52-42 (Employes' Exhibit A).

On February 3, 1955, Carrier issued Bulletin No. 4 at St. Louis, Missouri advertising a vacancy of Buffet Lounge Attendant-in-Charge at that headquarters (Employes' Exhibit B). On February 15, 1955, Carrier issued its Award No. 4 to Bulletin No. 4 assigning the position of Buffet Lounge Attendant-in-Charge to C. R. Lee (Employes' Exhibit C.)

C. R. Lee entered Carrier's service on August 31, 1942 at St. Louis, Missouri as a waiter.

On February 15, 1955, C. R. Lee was not on the seniority roster in the classification of Buffet Lounge Attendant-in-Charge as holding seniority in that classification as revised July 1, 1954.

On May 5, 1955, the certified representative on the property of the Carrier lodged a protest with Carrier (Employes' Exhibit D). This protest

essentially unfair and in violation of the Railway Labor Act, but would also constitute a vain and useless act on the part of the Board. Under the authority of many court decisions* any award made under such conditions is invalid and unenforceable.

CONCLUSION

The Carrier has shown that neither the Claimant nor a representative properly authorized by him to act in his behalf has complied with the applicable appeal requirements of the Agreement and that your Honorable Board is without any jurisdiction to entertain this claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

All data contained herein have been presented to the employe involved.

OPINION OF BOARD: The Carrier advanced three primary reasons why it believed this claim should be denied, namely; (1) this Board is without jurisdiction because the matter ought to have been processed through the System Board of Adjustment as provided for in the basic Agreement, and (2) there was not compliance with the time limit rule and (3) the dispute was never submitted to the System Board of Adjustment. The Organization maintained that these arguments are erroneous, and both parties submitted evidence on the merits of the controversy. Since it is our Opinion that the matter should have been referred to the System Board of Adjustment we believe an analysis of the contentions is unnecessary.

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 Employe involved in this dispute are respectively Carrier and Employe 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

The parties to said dispute requested the right of appearance, which was granted, at a hearing before the full Board and Referee, attended by Carrier's representative only. No reason was given for the Organization's failure to appear at the hearing.

The Agreement between the parties on file with this Division provides for a System Board of Adjustment to handle such controversies, therefore this Board is without jurisdiction.

* *Nord v. Griffin*, 86 F. 2d 481 (C.C.A. 7th 1936), cert. den. 300 U.S. 673 (1937); *Estes v. Union Terminal Co.*, 89 F. 2d 768 (C.C.A. 5th 1937); *Watson v. Missouri, Kansas-Texas R. Co. of Texas*, 173 S.W. 2d 347 (Texas Civ. App. 1943); *Hunter v. Atchison, Topeka and Santa Fe Railway Co.*, 171 F. 2d 594; *Missouri-Kansas-Texas R. Co. et al. v. Brotherhood of Ry. and S.S. Clerks, et al.* 188 F. 2d 302; *Illinois Central R. Co. v. Whitehouse*, 212 F. 2d 22; and *Allain v. Tummon et al.* 212 F. 2d 32; *O.R.T. vs. N.O.T. & M.R.R.*, 229 F. 2d 52.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February 1962.