Award No. 10607
Docket No. DC-10084

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 370 on the property of the New York Central Railroad, hereafter referred to as the Carrier, for and on behalf of Cooks J. Jackson, W. Brazille and J. McClendon; Waiters Sidney Gore, C. N. Hart and H. Elliott and all others similarly situated, arising out of violation by the Carrier of Rule 4(a), 4(d) and 4(g) and claiming that cooks' and waiters' positions on Train 47 (The Detroiter) be posted for bid in New York City and awarded to claimants, that they have their vacation rights adjusted and that they be compensated retroactively for all time on Train 47 allotted to employes of seniority districts other than New York.

EMPLOYES' STATEMENT OF FACTS: Train 47, the Detroiter, operates from New York to Detroit. Prior to October 28, 1956, bids for positions in the dining car were advertised in the New York Seniority District. Commencing October 28, 1956, the Carrier, without the consent of Local 370, transferred the bids to the Buffalo Seniority District, and since that date all bids for dining car positions on Train 47 have been advertised in Buffalo.

The Union protested this unilateral action of the Carrier in removing work which for many years had been assigned to the New York Seniority District and assigning it to another seniority district. On January 14, 1957, the Local Chairman filed a time claim for employes adversely affected by loss of work in the New York Seniority District (Employes' Exhibit A). The Superintendent of Dining Service denied the claim (Employes' Exhibit B). On March 19, 1957, the General Chairman of Local 370 appealed the decision denying the claim to the Manager of the Dining Service Department, the highest officer on the property to consider such appeals (Employes' Exhibit C). On May 6, 1957, that official denied the appeal of the claim (Employes' Exhibit D).

POSITION OF EMPLOYES: The current agreement, effective January 1, 1942 and supplements thereto, are on file with this Board and are incorporated herein by reference as though fully set out. The title of the agreement should be noted for it is pertinent herein. The title reads: "The New York Central Railroad (Buffalo and East) AND Hotel and Restaurant Employes and Bartenders International Union Local No. 370." Thus, even on its cover the agreement distinguishes between Buffalo and other areas covered by it.

In a number of awards, some of which are quoted hereinafter, the National Railroad Adjustment Board has consistently upheld the right of the Carrier, in the interests of economy and efficiency of its operations, to assign and distribute the work necessary for its operation, where it had not limited its right in this respect by the provisions of the collective agreement.

Award No. 5331, Third Division

"Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy."

Award No. 6270, Third Division

"An Employer retains, subject to the limitations of the collective bargaining agreement, all those functions generally considered and accepted as inherent prerogatives of Management. These ordinarily include distribution of the work load and direction of the working force."

Award No. 6937, Third Division

"The right of a Carrier to assign its work and direct its working forces is absolute save and except for such limitations as it has assumed by the collective Agreement made for and on behalf of its employes and entered into by and between Carrier officers and the duly accredited Employe Representative."

Conclusion

For the reasons hereinbefore cited, Carrier respectfully submits that the claim of the Employes in this docket is without merit and should be denied.

All the facts and arguments herein presented were made known to the Employes during handling of the case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years prior to October 28, 1956, the Carrier operated trains 47 and 48 between New York and Detroit. Except for a "swing" assignment, the home terminal for dining car crews was New York and assignments were made from the New York seniority roster. For over 14 years prior to July, 1955, "swing" assignments on these trains were made from the Buffalo seniority roster.

Effective October 28, 1956, the Carrier combined trains 8 and 48 from Detroit, Michigan, to New York. The New York car which had been on train 48 was discontinued. "In order to provide a return move and avoid deadheading the employes from Detroit to New York, the home terminal for dining service operations on train 47 was transferred to Buffalo."

The Organization contends that the Carrier violated Rule 4(d) of the Agreement which provides that there shall be separate seniority rosters for the New York and Buffalo Districts and that Carrier had no right to transfer the home terminal of train 47 from New York to Buffalo and deprive the dining car employes on the New York seniority roster of employment on train 47.

The Awards cited by the Organization which hold that work may not be unilaterally transferred from one seniority district to another are distinguishable from the case at hand.

First, the Carrier did not transfer work from one seniority district to another. Because of economic reasons the Carrier transferred the home terminal from New York to Buffalo. There is nothing in the Agreement which prevents the Carrier from making such transfers. This is supported by the terms of the Agreement entered into between the Carrier and the Organization which became effective September 15, 1948. This Agreement which amends Rule 4(j) permits dining car employes "to transfer from the Buffalo District to the New York District or vice versa . . . and carry their seniority to the district to which transferred." This amended Rule 4(j) continues:

> "Employes electing to transfer from the Buffalo District to the New York District or vice versa in accordance with this provision shall be permitted to exercise their seniority in the district to which transferred with respect to any positions subsequently advertised for bid in that district, subject to Rule 4(a). Until such time as they bid in and are awarded a regular assignment, they may be used in extra service consistent with their seniority."

It is evident that the parties reached this agreement because the nature of dining car operations frequently required changes in the home terminal.

Second, the record shows that the Carrier previously changed home terminals from Buffalo to New York and vice versa (R26) including train 47 (R65, 76, 77 and 78). In September, 1948, Carrier bulletined jobs on train 47 in the Buffalo District (R79) even while the home terminal was in New York. It is apparent the strict seniority assignments were never adhered to and the parties accepted such a practice. In Award 40 (Without Referee), involving another local of the same International Organization and the same Carrier, this Board held that there were "many changes in home terminals of runs covering a period of years . . . " We denied a claim that employes "removed from runs or demoted by reason of the changes of Home Terminals be restored to service with their original status intact, together with all compensation lost as a result of the removal." We held that "there appear comparatively few instances in which men were allowed to follow the runs when home terminals were so changed." Under Rule 4(j) employes may now transfer from one seniority district to the other and, in time, may even succeed "to follow the trains when home terminals were so changed." A practice of long standing should not be disturbed, particularly where there is no direct prohibition in the Agreement.

For the reasons herein stated we are of the opinion that the Carrier had the right to change the home terminal of train 47.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.