

Award No. 10630

Docket No. DC-10397

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Baltimore and Ohio Railroad Company violated the sign-out procedure and working rules of the current agreement when they denied Waiter Richard H. Davis his assigned position as pantryman from April 16, 1957 to April 24, 1957.

Carrier further violated an understanding of long practice of relieving one extra board employe with another extra board employe.

We request the Baltimore and Ohio Railroad now compensate Mr. Davis for the difference between what he was paid and what he would have received had he been permitted to work as a pantryman. And further, we request that Mr. Davis be paid the difference between his earnings on the car he was assigned to after being relieved from Car 1052, as he would have received had he been permitted to continue to work on Car 1052 as pantryman.

EMPLOYEE'S STATEMENT OF FACT: There is in existence an agreement effective March 16, 1948 between the parties to this dispute covering employes in the Dining Car Department of the Baltimore and Ohio Railroad.

Mr. Davis is an employe, who has established seniority under the above mentioned agreement. Just prior to April 16, 1957, Waiter Davis was an extra board employe unassigned. As an extra board employe unassigned, he was required and did place his name in the sign-out book that is located in the office of the Superintendent of Dining Cars in Washington, D. C.

On April 16, 1957 Waiter Davis was assigned to Car 1052 to relieve Waiter J. P. Smith who was working as a pantryman. The rate of pay for a pantryman is higher than that of a Waiter. The Steward, disregarding the sign-out slip, assigned another employe to the position of pantryman instead of Waiter Davis. Waiter Davis was placed in the body of the car as a Waiter at a lower rate of pay.

There is also in effect a Book of Rules for Dining Car Department employes, issued by the Dining Car and Commissary Departments of the Carrier identified as Form 1875 Spl.Rev.9-5-52. Rule 3 therein reads as follows:

"Relief from Duty: An employe assigned to relieve a crew member will be provided with written authority from the manager or his representative."

It next appeared as Article 15(h) of the agreement of May 1, 1945, with Hotel and Restaurant Employees International Alliance, Dining Car Employees Union, Local No. 495. The rule was identical with the 1941 rule.

For many years prior to the adoption of this rule and its incorporation into the 1941 agreement it had been the practice on this Carrier for the Crew Dispatcher to make assignment of employees from the extra board to extra dining cars. The organization that held the contract, Local 495, was in full accord with this standard and accepted practice. The practice has continued to the present time. It is unlikely and unsatisfactory for the organization presently holding the contract to attempt to place a different interpretation upon the agreement.

Even when the 1945 agreement was opened for revision in 1946 and 1947 by U.T.S.E. there was never any proposal made taking the authority for such assignments from the Crew Dispatcher.

One proposal dated January 8, 1946, would have read:

"Rule 5 — Section 4 — Extra Board —

An extra board shall be provided on each seniority district to provide relief for all regularly assigned employees, and to protect all special and extra service. A sufficient number of extra employees shall be maintained to fully protect the service."

This proposal was not accepted for incorporation into the agreement. A proposal of May 23, 1947, superseding the prior proposal was to read:

"(h) The establishment of extra boards and the handling of extra men will be made by mutual agreement between representatives of the employees and Management, Dining Car and Commissary Department."

The final agreement incorporated the identical rule that had appeared in the 1945 and 1941 agreements.

The fashion in which the claimant was handled on extra dining car 1052 was both proper and correct and in complete harmony with the established practices and procedures on this property.

The Carrier respectfully requests that this Board find this claim in its entirety as being without merit and that the claim be declined.

OPINION OF BOARD: The record shows that, on April 16, 1957, claimant Davis was assigned from the extra board to service as waiter on Car 1052 for an indefinite period, and that, on April 24, 1957, he was replaced on that assignment with another extra employee and assigned to another car.

The Organization contends that claimant should have been used as pantryman on Car 1052, alleging that he was assigned thereto in relief of Pantryman Smith who was laying off. No rule is cited to support this contention, and Carrier's statement that the usual practice is for the Steward to select the waiter from the crew who is to act as pantryman is not denied. Consequently, we must deny the claim for the pantryman's differential rate.

The Organization also contends that, on April 24, 1957, claimant was removed from service on Car 1052 in violation of Rule 15 (h), which provides as follows:

"The establishment of extra boards and the handling of extra men will be by mutual agreement between representatives of the employes and Manager, Dining Car and Commissary Department."

The record does not show that claimant's removal from service on Car 1052 was in accordance with any mutual agreement between the parties, nor show any reason which necessitated this change. Accordingly, claimant is entitled to be made whole for the difference, if any, between what he would have received as waiter on Car 1052 and what he earned in other service for the period he otherwise would have held the assignment as waiter on Car 1052 commencing April 24, 1957.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 claim is disposed of in accordance with Opinion.

AWARD

Claim is sustained for difference, if any, between what Claimant would have earned as waiter on Car 1052 and his earnings in other service, and denied in all other respects, in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1962.