Award No. 10784
Docket No. DC-9831

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Erie Railroad Company for and on behalf of George L. Witsell, and other employes similarly situated, that they be paid the difference between what they should have been paid as regularly assigned employes from the date of the inauguration of the Jersey City, N. J., Deposit, N. Y. operation from August 9, 1955 and for each and every day thereafter until the claim made herein has been fully complied with account Carrier's violation of current agreement.

EMPLOYES' STATEMENT OF FACTS: Under date of August 9, 1955, Organization's General Chairman submitted the foregoing claim to Carrier's Superintendent Dining Car Service. (Employes' Exhibit A). Under date of October 17, 1955, Carrier's Superintendent Dining Car Service denied the claim submitted. Organization's General Chairman, under date of October 19, 1955, appealed the denial of the claim to Carrier's Assistant to Vice President, the chief officer designated to appeal such appeals. (Employes' Exhibit B). Conference was had on the appeal on May 24, 1955.

Under date May 25, 1956, Carrier denied the appeal (Employes' Exhibit C).

The facts are relatively clear and it is believed not disputed. They are that on or about July 1, 1955, Carrier inaugurated a train between Jersey City, New Jersey and Deposit, New York and made crew assignments thereto which carrier knew would exist for more than 30 days duration. The inauguration of this train is a yearly occurrence.

Carrier failed to bulletin the crew assignments.

POSITION OF EMPLOYES: Rule 3(a) of the current agreement which is on file with this Board and which is incorporated herein by reference, provides as follows:

> **"Rule 3 — Advertising and assigning positions** (a) New Positions or permanent vacancies in established position will be bulletined promptly for a period of ten (10) days.

the claim on the property did the General Chairman enlighten the Carrier as to how and on what basis Mr. Witsell had been deprived of his contractual rights, except to contend that he would have been paid more if the position had been bulletined and assigned to him. As to "other employes similarly situated" the Carrier declined to discuss the claim for unnamed employes. See Carrier's Exhibit "D."

The Carrier asserts that claims cannot be sustained on mere supposition. This Board has repeatedly held that claims such as this one are too broad and not susceptible of ascertainment. Awards 4117, 6101, and Interpretation No. 1 to Award 6101, 6179, 6339, 6528, 6529, 6886, 6090, and others. See, also, **Brotherhood of Railroad Signalmen of America** vs. **The Atchison, Topeka and Santa Fe Railway Company,** 23 L.C. 67, 494. The court refused to enforce Award 4713 on the grounds that the Award and Order were too indefinite and uncertain.

In the light of the foregoing authorities, the claim herein, in any event, is limited to Employe Witsell, who, in accordance with Award 6391, must show just how his contractual rights have been invaded, if he is to prevail.

When the facts and circumstances herein involved are viewed in the light of the Agreement itself, it is clear that there has been no violation thereof. 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: This dispute centers around a contention by the Employes that Carrier violated the Agreement when it failed to bulletin certain jobs in accordance with Rule 3 of the Agreement between the parties.

We quote the material part of Rule 3:

> "(a) New positions or permanent vacancies in established positions will be bulletined promptly for a period of ten (10) days.
>
> Temporary vacancies in established positions known to be of more than thirty (30) days' duration, will be bulletined promptly for a period of ten (10) days."

The trains involved were Numbers 47, 43 and 44 operating between Jersey City, New Jersey and Deposit, New York, a distance of 176 miles, and that the time on duty was about five hours per trip or approximately ninety (90) hours per month.

The trains operate on certain days during the months of July, August and September as follows:

> "No. 47 — Friday only July 1 to Sept. 2 inclusive, a total of 11 Fridays.
>
> No. 43 — Saturday only July 2 to Sept. 3, inclusive, a total of 10 Saturdays.
>
> No. 44 — Sunday only July 4 to September 5th inclusive, a total of 11 Sundays.

At the outset Carrier objects to the employes handling of the case on the grounds that (1) it was not submitted to the Division within the time allotted in Rule 8(b).

We quote from Rule 8(b):

"The right of appeal through the regular channels to the Chief Operating Officer designated is conceded. However, appeals from decisions rendered must be made within thirty (30) days. All decisions concerning grievances progressed in the regular manner will be made in writing, if requested."

And (2) Carrier objects that there was unreasonable and unconscionable delay in submitting the case to the Board.

With respect to point 1, we believe that this question was answered by this Division in Award #10323, involving this Carrier, and the same contract, denying the contention of the Carrier, and Carrier's objection as to point 1 is denied.

With regard to point 2, the record shows that that claim was denied on the property on May 26, 1956 and that notice of intent to file an ex parte submission was not given until July 19, 1957 or approximately 14 months later. We are not passing on this question, believing it best to decide the case on its merits.

We turn now to the merits of the case.

The Employes contend that in as much as the positions in question had a known duration of more than 30 days Carrier was required under Rule 3(a) to bulletin them. However, the record shows that none of these positions lasted for 30 days. Two of these trains operated 11 days and the remaining one 10 days, thus the positions involved in this case do not come under the 30 day period in Rule 3(a).

These trains were summer excursion trains and have been so operated for many years; a similar claim for the year before was dropped by the Employes. The Carrier points to the fact that the past practice has always been to consider these summer excursion trains as extra service, with this we agree.

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 herein; and

That it follows that the Agreement was not violated.

AWARD

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.