Award No. 10938
Docket No. DC-10578

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 370 on the property of the New York, New Haven and Hartford Railroad Company for 16 hours pay for George Lappas, bartender, or any other employes similarly situated covered by agreement between parties, account Carrier's blanking position bar attendant Train 8, Friday, June 21, 1957, New York to Boston in violation of agreement.

EMPLOYES' STATEMENT OF FACTS: Under date of June 27, 1957, Organization's General Chairman submitted claim to Carrier's Superintendent Dining Car Service making the foregoing claim (Employes' Exhibit A). It appears that on Thursday, June 20, 1957, dining car steward employed by Carrier was instructed by Carrier's Superintendent Dining Cars to act in the dual capacity of steward and bar attendant on Train 8 on Friday, June 21, 1957, New York to Boston. Upon his refusal to do so, the bar equipment on this train was closed.

On July 10, 1957, Carrier's Superintendent Dining Service denied the claim (Employes' Exhibit B). The denial of the claim was duly appealed by Organization on August 6, 1957 (Employes' Exhibit C) and was denied on appeal on January 16, 1958 (Employes' Exhibit D).

POSITION OF EMPLOYES: The agreement between the parties is effective as of October 1, 1953 and copy is on file with this Board. This agreement is incorporated herein by reference as though fully set out. The scope of the agreement as noted in the first sentence of the agreement is as follows:

> "Agreement effective October 1, 1953, between the New York, New Haven and Hartford Railroad Company and Dining and Grill Car Employes represented by Dining Car Employes Union, Local 370."

Rule 3 lists the employes in Dining Car and Grill Car and under the Grill Car employes is listed the class and craft of service of soda men and bar attendants. Thus there can be no doubt that the scope

In Award 7309, (Referee Rader) the Board held in part:

> "The assessing of the penalty claimed would be an extremely drastic measure to be invoked and one of doubtful legality under the rules of the Agreement, **as no specific rule** can be used as a basis for such an award." (Emphasis ours.)

In prior decisions the Board held that, in the absence of a specific rule to the contrary, blanking positions to be proper. See Third Division Awards 1412 (Referee Stone), 5241 and 5242 (Referee Boyd).

Relief granted absent a cause has the effect of rewriting the Agreement, and agreements are revised through processes established by the Railway Labor Act. It is Carrier's contention that absent specific rule between the parties, past practice is controlling.

The Carrier takes exception to Employes Statement of Claim which states in part:

> ". . . George Lappas, bartender, or any other employes similarly situated . . ."

The wording "or any other employes similarly situated" is unspecific. The statement of claim seeks damages for unknown persons. Notwithstanding the fact that Lappas is without claim, a blanket contention for unspecified pay loss may not properly be the subject of an award.

Employes entered similar claim as in the instant case on this property on August 18, 1954. In that case there were no qualified spare bar attendants available and the train involved was operated without a bar attendant. The claim was denied on March 16, 1955, by the highest officer designated to hear appeals and so far as Carrier's records reveal nothing further was heard from the Organization in this regard.

Neither practice nor rule requires the Carrier to remove claimant Lappas from assignment he held at Boston, as result of exercising his displacement rights, and deadhead him 229 miles to New York to cover a one-day vacancy.

Neither practice nor rule prohibits Carrier from blanking the position on Train 8.

This claim is without merit and should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

OPINION OF BOARD: Claim here is progressed on behalf of George Lappas, bartender, for sixteen hours pay, or any other Employes similarly situated. It is alleged that Carrier blanked the position of bar attendant on Train No. 8, June 21, 1957.

The record before us here, shows that Bar Attendant, Bryk held regular assignment on Train No. 8, prior to claim date Bryk had exercised his regular right of displacement and had taken a position of bar attendant on Train No. 360. By such action Bryk brought about a vacancy on Train No. 8, on claim date.

Carrier contends it had no available or qualified bar attendants to fill the vacancy, and under such situation the bar remained closed during the trip.

The Organization contends that the dining car Steward on Train No. 8, was requested by Carrier, to serve as both Steward and Bar Attendant on June 20, 1957, on the trip involved the following day. The Steward refused to accept the dual assignment, resulting in blanking the bar attendant position and closing down the bar equipment on the trip.

Claim is made on behalf of George Lappas, in addition to other similarly situated Employes. The record shows that Lappas had received an assignment on June 19, 1957, as bar attendant on Train No. 28, New York to Boston, and return to New York on Train No. 28. This assignment of Lappas, shown arrival in Boston, June 20, 1957, at 10:45 P. M., and leaving Boston 4:45 P. M. arriving New York, 9:00 P. M., June 21, 1957. The record does not support the contention that Lappas was available for service as claimed here. Whether he could or could not have been deadheaded to New York from Boston, following his arrival in Boston the night of June 20, 1957, is not shown, in time to leave New York, at 8:00 A. M., June 21, 1957, on Train No. 8. From the record, the claim of George Lappas, should be denied, for the reason there is no showing that such Employe was available for service as alleged.

As to claims of "or any other employes similarly situated", such claims if any should be dismissed, for the reason that such claims are too vague, indefinite and uncertain. The various Divisions of the N.R.A.B., have held in numerous decisions such claims are improper for reasons above stated.

Further, we can find no rule that prohibits Carrier from blanking a position as involved here.

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

Carrier did not violate the Agreement.

AWARD

Claim of George Lappas denied, all other alleged claims dismissed for reasons stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.