

Award No. 11318

Docket No. DC-10897

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 495

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 495, on the property of Chesapeake and Ohio Railway Co. for and on behalf of William J. Freeman, Waiter, that he be paid the difference in hours earned by C. D. Solomon, Waiter, over the amount earned by claimant for trip of October 18, 1957, Diner 966.

EMPLOYEES' STATEMENT OF FACTS: Organization filed the instant claim with Carrier's Superintendent Dining Service Section under date of November 21, 1957 (Employees Exhibit A). On December 16, 1957, Carrier's Superintendent Dining Service Section declined the claim (Employees Exhibit B).

Under date of December 23, 1957, Organization appealed the declination of the claim to Carrier's Assistant Vice President Labor Relations, the highest officer designated on the property to consider such appeals. Appeal conference was held February 7, 1958, and thereafter on March 19, 1958, Carrier's Assistant Vice President Labor Relations declined the instant claim on appeal (Employees Exhibit C).

The facts of this claim are simple and clear. Claimant completed assignment on October 2, 1957. Waiter C. D. Solomon completed his assignment on October 4, 1957.

Waiter Solomon was given assignment on Trains 6 and 3 October 18, 1957, reporting by 3:00 P. M. Claimant was given assignment October 18, 1957, reporting by 4:45 P. M.

POSITION OF EMPLOYEES: The current agreement between the parties, effective September 1, 1945, is on file with this Board and is incorporated herein by reference. Rule K of that working agreement provides that the first out qualified employe on the extra list will be used in making assignments from the extra list. It is obvious that as claimant completed his assignment on October 2, 1957, he was, as between himself and Waiter Solomon, the first out qualified employe on the extra list and should have been given the assignment on Trains 6 and 3, October 18, 1957, reporting time 3:00 P. M. The as-

If this arrangement is not satisfactory to the employees, they have full control of the situation by merely making themselves available at Ashland and this requires no negotiations, change in rules or practices in order to accomplish this. The Carrier would certainly not be justified in paying for deadhead movements not made and cannot go to the additional expense of calling employees at Cincinnati, and then also paying them for deadheading movements that they do not make.

The employees' claim in this case is entirely inconsistent, and they are attempting to maintain their position that Waiter Freeman was runaround by Waiter Solomon through some fault of the Carrier, when, as a matter of fact, there was no runaround involved, and the only reason Waiter Solomon went under pay ahead of Waiter Freeman was due to the fact that Waiter Freeman elected to remain at Cincinnati instead of making himself available at Ashland, the point where the extra list is maintained.

It is the Carrier's position that the agreement rules of the Dining Car Employees were properly applied in this case and the claim of the employees should be denied.

All evidence introduced in this submission has been previously discussed in conference or by correspondence with the representative of the employees.

OPINION OF BOARD: On October 18, 1957, Claimant W. Freeman stood first out on Waiters' extra list. C. D. Solomon stood second out. Claimant was assigned to Train No. 2. He had a reporting time of 4:45 P. M. Waiter, Solomon was assigned to No. 6 with a reporting time of 3:00 P. M.

Carrier contends that the Claimant would have gone on pay first if he had been in Ashland.

Rule 10 (k) states that the first out qualified employee on the extra list will be used.

There is an understanding between the parties that waiters who do not live at Ashland are not required to make themselves available at that point, but will not be paid for deadheading between Ashland and their residence.

If the Carrier had revised the assignments, Solomon would have started first because he would have started out at 12:10 P. M. We hold that the assignment Claimant received was the first out. For that reason, we believe the Agreement was not violated.

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 Employees involved in this dispute are respectively Carrier and Employees 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 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 22nd day of April 1963.