Award No. 11397
Docket No. DC-10931

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Time claim of Joint Council Dining Car Employees Union Local 370 on the property of the New York Central System (Lines East) for and on behalf of Sidney Gore, D. Edwards, C. S. Jackson and other employes similarly situated for pay, seniority rights and vacation rights retroactive to on and after October 28, 1956, account named claimants and other employes similarly situated being furloughed or placed on extra lists while employes not covered by agreement with Organization were assigned work as train porters Trains 67 and 68 (The Commodore Vanderbilt).

EMPLOYES' STATEMENT OF FACTS: On September 24, 1957, Organization filed claim in the instant docket (Employes Exhibit A). On September 30, 1957, Superintendent Dining Service denied the claim. Under date of October 9, 1957, Organization appealed the claim to Manager Dining Service, the highest officer designated on the property by Carrier to consider such appeals (Employes' Exhibit B). Under date of October 14, 1957, Carrier's Manager Dining Service denied the claim on appeal (Employes' Exhibit C).

The facts in the instant docket are relatively simple. On October 28, 1956, the Carrier, without prior conference or negotiation with Organization, assigned train porter's position, Trains 67 and 68, The Commodore Vanderbilt, New York to Chicago and return, to employes not covered by the agreement with Organization. The custom, usage and practice on this property has been that when Carrier, for operational or other reasons, desires to assign provisions to employes covered by other agreement, Organization was notified and the changes were accomplished by conference, negotiation and mutual agreement. Porter assignments on Trains 1 and 2 between Chicago and New York and Trains 27 and 28 between Chicago and Boston were handled in this manner between Carrier and Organization. Carrier departed from the established custom and usage in making the assignments involved in the instant claim.

POSITION OF EMPLOYES: The current agreement between the parties became effective January 1, 1942, (as modified and revised on various dates to and including July 15, 1953) and is on file with this Board. Said agreement is incorporated herein by reference as though fully set out.

Attention is directed to Section 3, First (j) of the Railway Labor Act, which states:

> "(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any dispute submitted to them." (Emphasis ours.)

This dispute, progressed by Local 370, Joint Council Dining Car Employes, involves a jurisdictional issue as to the right of employes whose positions are within the scope of agreement between Carrier and Local 233, Joint Council Dining Car Employees, to work as train porters on trains 67 and 68, the "Commodore Vanderbilt" between Chicago and New York. Local 233 is vitally interested and directly involved in this dispute, the outcome of which might adversely affect its interests.

The notice contemplated by the statute is required in this case only if Local 233, Joint Council Dining Car Employees, might be adversely affected (See Award 8070). Carrier submits that the claim should be denied on the merits. However, if it appears that consideration of the agreement between Local 370, Joint Council Dining Car Employees and the Carrier, and the agreement between Carrier and Local 233, Joint Council Dining Car Employees as well, and consideration of the custom and practice under those agreements, is necessary to fulfill the purpose of the statute, then the notice contemplated by Section 3, First (j) must be given Local 233.

CONCLUSION

For the reasons set forth in points 1 and 2 hereof, Carrier submits this claim should be denied for lack of merit. However, if consideration of agreement between Respondent and Local 233, Joint Council Dining Car Employees, and practices thereunder is necessary to fulfill the purpose of the statute, then the notice contemplated by Section 3, First (j) of the Railway Labor Act must be given Local 233.

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: The trains involved in this dispute operate between Chicago and New York City. The Claimants are train porters based in New York City. They contend that Carrier had established a practice of holding a conference when it wished to assign positions covered by Agreement to another Agreement, and that the hours lost were transferred back by other assignment.

The record indicates that this work had always been done by train porters out of Chicago. There is nothing in the Agreement that gives the Claimants seniority on these specific trains.

For the foregoing reasons, we find 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 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 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 14th day of May 1963.