

Award No. 11404

Docket No. DC-11181

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Time claim of Joint Council Dining Car Employees Union Local 351 on the property of Illinois Central Railroad Company for and on behalf of William Manning because of run-around imposed upon him by Carrier's failure to assign claimant, who was available and who had been available for four (4) days prior to April 30, 1958, and the fact that Mr. Tom Conway was assigned, we demand that claimant be paid for actual hours of service earned by Mr. Tom Conway from time required to report for duty, April 30, 1958, and for all other hours earned by Mr. Tom Conway during full period of the assignment commonly and herein referred to as the Derby Special.

EMPLOYEES' STATEMENT OF FACTS: On May 9, 1958, claimant executed the power of attorney appointing Organization and its General Chairman his attorney in fact to handle the instant time claim. A true copy of the power of attorney is attached hereto as Employees Exhibit A. Pursuant to that authority, Organization submitted claim under date of May 9, 1958, to Carrier's Superintendent Dining Service within 20 days of its occurrence (Employees Exhibit B).

On May 12, 1958, Carrier's Superintendent Dining Service declined to progress the claim on the ground claimant was represented by another organization (Employees Exhibit C). The claim was appealed on May 15, 1958 to Carrier's General Superintendent (Employees Exhibit D) and corrected by letter May 16, 1958 (Employees Exhibit E) setting out the fact that the organization referred to in letter of denial of claim (Employees Exhibit C) was Brotherhood of Railway Trainmen. It was further pointed out by Organization's General Chairman that the Brotherhood of Railway Trainmen would not accept claimant's membership.

Carrier's General Superintendent declined the claim on appeal on June 4, 1958 on the same grounds as initially declined that it would be improper for Carrier to progress the claim with Organization, (Employees Exhibit F). On June 9, 1958, the claim was appealed to Carrier's Director of Personnel, the highest officer designated on the property to consider such appeals (Employees Exhibit G). The claim was denied on appeal at this stage on June 30, 1958 (Employees Exhibit H).

with the interpretation put upon that agreement by the parties thereto; those parties being in accord that the claim is without merit it must be denied."

Also refer to Award No. 6248 where the Board said:

"The evidence of record reveals that the parties to the controlling Agreement are in accord that the claim is not supported by the rules."

See also Third Division Awards 5558, 6895, 6915, 7490 and 7942.

The claim of Steward Manning is not supported by the rules, and the parties to the controlling agreement are in accord that it is not valid. The claim should be denied.

All data in this submission have been presented to the Organization and made a part of the question in dispute.

OPINION OF BOARD: It appears from the record that a regular Steward assigned to Trains 1-2 became ill on April 16, 1958. Extra Steward Grossman, first out on the extra board, was assigned to the temporary vacancy on Trains 1-2 and held it until displaced April 26, by the Claimant, Extra Steward William Manning, in accordance with Article 17 (a) of the Agreement.

In 1958 the Derby Specials dining cars were stocked and staffed at Chicago and were sent out on the evening of April 30 to their respective destinations. On April 30 two Extra Stewards were assigned to the Derby Special and one more Steward was needed. Steward Conway, who was senior to Claimant, finished his last trip as a regular man on April 29, was assigned. April 30 was on a layover day of Claimant Manning's temporary assignment.

The issue in the instant case, is— "Was Steward William Manning eligible to be used on the Derby Special April 30, 1958?"

Article 17 (a) of the Agreement, which is controlling, provides as follows:

"Filling Temporary Vacancies

"Temporary vacancies of ten days or less will be filled from the extra board, the extra man catching such run to hold it until it expires, or for at least ten days. After the expiration of ten days, the senior extra man available making application therefor will be placed thereon. If the vacancy is known to be open for a period of ten days or more, at the time it first becomes vacant, the senior extra man desiring same will be placed thereon. It is understood this does not prevent the use of regularly assigned stewards for extra service with the car on which they last performed regular service without penalty to the Company."

Manning was assigned to fill the temporary vacancy for ten days or until it expired, whichever was shorter, and was not entitled to take extra work from the extra board during his tenure on the temporary vacancy. Consequently, he was not eligible to be used on April 30. Whether or not Conway was available at the time is not significant as he was senior to Claimant Manning at the time.

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 17th day of May 1963.