Award No. 12136
Docket No. DC-11904

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 370

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 370 on the property of the Pennsylvania Railroad Company for and on behalf of Preston James, Jr., that he be accorded seniority and pay as of October 1, 1956 in the position of Parlor Car Porter and/or Parlor Lounge and/or Parlor Buffet Attendant account of Carrier's violation of agreement.

EMPLOYES' STATEMENT OF FACTS: On June 25, 1956 Carrier posted notice to employes of its Dining Car Department advising that effective October 1, 1956 it would take over operation of Parlor Car and Parlor Lounge Cars. It further advised Dining Car Department employes that it would consider applications in writing for positions of Parlor Car Attendant and Parlor Lounge Attendant. It notified the employes that those interested could communicate with the Regional Superintendents at Long Island, New York; Chicago, Illinois; Pittsburgh, Pennsylvania and Washington, D. C.

Pursuant to this notice claimant submitted an application for positions as Parlor Car Porter and/or Parlor Lounge and/or Buffet Attendant on July 3, 1956.

Carrier unilaterally rejected claimant's application on the ground that he did not meet the requirements for the position applied for. Carrier did not advise claimant of the qualifications it set out for the said positions. Even if it had, the record shows that at the time claimant submitted his application he was told by the Crew Dispatcher that his application "would be thrown in the garbage can".

Carrier knew on the date that claimant submitted his application that claimant had been assigned and acquired seniority in its employ as a Buffet Lounge Attendant in Charge and as a Waiter in Charge.

On October 1, 1956 Carrier assigned positions as Parlor Car Porter and Parlor Lounge and Parlor Buffet Attendants to employes who were junior in seniority to claimant, and to employes who had no previous employment relationship with Carrier other than training for an assignment to these positions. Both prior to and after October 1, 1956 Carrier assigned claimant to positions,

OPINION OF BOARD: The facts pertinent to a disposition of this claim are as follows: In October 1, 1956, Carrier began to operate its own parlor and lounge cars. This action necessitated the establishment of approximately ninety-eight positions in the parlor car section. Notices were posted advising employes that applicants for the position would be considered from the Dining Car service. The complainant applied, failed to pass a preliminary test and was not selected for the position although he had sufficient seniority. The Carrier concluded that the Claimant did not possess the necessary fitness and ability to perform the functions required of parlor car or parlor lounge car attendant.

In April 1958, the Claimant protested by letter his failure to be selected for the position and cited a violation of Rule 7-A-2 in support thereof. At this time Claimant and his representative were informed that the rules required claims to be submitted within ninety days from the date of the occurrence of the alleged grievance. Subsequently, in May 1958, the Organization by letter to the Superintendent, Dining Car service alleged a violation of Rule 2-A-2, particularly (a), (f) and (g) thereof. Various correspondence was exchanged by the Carrier's representative and Organization's representative until December 30, 1958, when the claim was again denied. Nothing further was heard on this matter until the present claim was filed with the NRAB on February 5, 1960. The claim had not been submitted to the System Board of Adjustment as required by Rule 7-A-3 of the Dining Car Agreement.

We are of the opinion that the Agreement applicable herein provides for the resolving of grievances, as alleged by the complainant, according to Rule 7-A-3, whereby a Systems Board of Adjustment has been established.

However, the facts reveal that the Claimant failed to pursue his rights under Rule 7-A-3, but appealed to this Board attempting to enforce his rights under other sections of the Agreement, or through the process of this Board, which remedy the Agreement specifically prevents.

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 is without jurisdiction to adjudicate this dispute in light of the Agreement between the Carrier and Organization as expressed in Rule 7-A-3.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1964.