Award No. 12477
Docket No. DC-14381

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Chesapeake and Ohio Railway Company, for and on behalf of William Manning and Mack Harris, Hosts, that they be paid the difference between what they did earn and what they would have earned, had not Carrier assigned to its Trains 11-12 Hostesses to perform the work of Host and Assistant Host in violation of the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: On January 21, 1963, Employes filed protest with Carrier's Superintendent Dining Cars requesting that Carrier cease and desist in its practice of assigning Hostesses as the supervising employes on its dining cars instead of Host. (Employes' Exhibit A.) Carrier, in letters dated January 23rd and February 8, 1963, requested that Employes specifically point out the trains on which the contested assignment was taking place. This Employes did, in letter dated February 22, 1963. (Employes' Exhibits B, C, and D.)

Under date of February 27, 1963, Carrier informed Employes that the claim was declined, contending that under Rule 24 of the Agreement, it was not obligated to assign either a Host or Assistant Host to the trains in question. (Employes' Exhibit E.) Employes, as a consequence, filed formal time claim, in letter dated March 5, 1963; this likewise being declined by Carrier under date of March 8, 1963. (Employes' Exhibits F and G.) Employes appealed this decision on March 15, 1963, to Carrier's Assistant Director of Personnel, the highest officer on the property designated to consider appeals, asking specifically that, inasmuch as Carrier had first declined the claim under Rule 24 of the Agreement and in a subsequent letter cited Rule 17 as the basis for its declination, Carrier advise the exact rule upon which it was relying. (Employes' Exhibit H.) Carrier's official response, letter dated March 20, 1963, requested conference on the matter. (Employes' Exhibit I.)

Further on merits, the claim as stated, if allowed, might be interpreted to require the Carrier to pay claimant Mack Harris, the last incumbent of the position here involved, the difference between what his earnings on this assignment would have been and the greater amount they may actually have been in his capacity as an extra employe since that assignment was abolished. As the junior employe in the Host Class, Mr. Harris was forced to accept assignment to the minimum guarantee assignment here involved. His gross earnings on that assignment during 1962 would have been $5,363.48, whereas he actually earned $5,521.00 in the year 1962 working extra. In addition, because of working extra, he was able to file for and collect benefits under the Railroad Unemployment Insurance Act and he did so. Had he been required to retain the regular assignment here involved, he would not have been eligible for such benefits. The claim here before you is, no doubt, intended to seek a difference only if Harris was paid less since the abolishment than he would have made had he followed it; however, claim does not so state.

Insofar as claimant William Manning is concerned, this man elected to work the extra board while he could have held the assignment here involved prior to its abolition. As an extra employe in 1962 he earned $5,869.31 and he, too, because of being an extra employe, claimed and was allowed benefits in addition thereto under the Railroad Unemployment Insurance Act. Claim in his behalf, if intended to cover loss, is also misstated.

In summary, Carrier has shown, first, that no compensation claim was made for more than twenty months after the position involved was abolished. This compensation claim contemplated the entire period subsequent to abolishment. Such a claim is clearly outlawed under Rule 17. Carrier has shown that more than sixty days elapsed after Carrier was notified that its final decision was rejected before appeal was made to your Board. Rule 17 clearly provides there is in fact no dispute to be referred to your Board in this case as the parties to the agreement have in Rule 17 agreed that this claim ". . . shall be deemed finally disposed of" by Carrier's final decision.

Carrier has shown also that were this claim to be considered on merits, it would surely fall under Rule 24, as no other rule or rules of the agreement may be construed to supersede or provide an exception whereby Carrier would be obligated to employ an assistant host here. The General Chairman's statement to the effect hostesses have not in the past acted as hostesses-in-charge, rendering reports, etc., carried in Carrier's Exhibit No. 7, is not correct. Carrier corrected the record in this connection in letter dated June 13, 1963, copy of which is attached as Carrier's Exhibit No. 10. Documentary evidence of the 1953 and 1954 disputes referred to in Exhibit No. 10 is also included herewith as Carrier's Exhibits Nos. 11 and 12.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the opinion of this Board that the claim herein asserted is barred by the rules of the agreement between these parties and should be dismissed.

This claim is made on behalf of a host and an assistant host whose jobs were abolished on June 24, 1961. No protest was made until January 21, 1963, and no claim was filed until March 5, 1963. The claim was processed and declined by the highest appeal officer of the Carrier on April 12, 1963. Although the Organization notified him in writing that his decision was not acceptable on June 6, 1963, no appeal was instituted until October 8, 1963, or until more than four months later, when notice of intent to appeal was submitted to this Board.

Carrier asserts Rule 17 (a) as a bar. This rule reads as follows:

"RULE 17 — CLAIMS.

(a) Questions involving compensation allowances arising under provisions of these rules shall be taken up with the superintendent dining service within thirty (30) days from the date the employe received his pay check for the pay period involved. If claim is denied by the superintendent dining service, an appeal may be taken up to the highest officer designated by the carrier to whom appeals may be made. Such appeals must be filed, in writing, within ten (10) days from date of each decision, and a copy furnished to the official appealed from. Decision on appeals will be rendered as promptly as practicable, consistent with any necessary conferences and proper consideration of all the facts in the case; in any event, not more than sixty (60) days except when extenuating circumstances require a longer period of time. A denial of such claim by the vice president and general manager shall be final and binding unless within sixty (60) days after such denial he is notified in writing that his decision is not acceptable. When such written notice is given, the claim must be appealed within sixty (60) days, and, if not so appealed, it shall be deemed finally disposed of."

It would appear that the last sentence of 17 (a) clearly requires the Organization to serve notice of their intent to appeal upon this Board within 60 days after they have notified the highest appeal officer of the Carrier that his decision is not acceptable. As pointed out above, this requirement was not met in the instant case.

Because this matter has not been properly presented, no decision upon the merits is rendered.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.