

Award No. 13014
Docket No. DC-14513

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 465
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union Local 465 on the property of the Union Pacific Railroad Company, for and on behalf of Waiter Claude R. Hunter, that he be paid for 137½ hours account of carrier assigning a junior employee to waiter's work from May 10, 1963, to May 19, 1963, in violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case are simple and not in dispute. Claimant has a waiter's seniority date of 7-21-39. Charles K. Montgomery has a waiter's seniority date of 12-10-44. Carrier assigned Waiter Montgomery to service from May 10, 1963, to May 19, 1963, for which he was paid for a total of 137½ hours. During this period, claimant was available for work but was not called.

Under date of June 3, 1963, Employees filed time claim on behalf of claimant, requesting that he be paid for 137½ hours account of carrier assigning junior employees to the work in question (Employees' Exhibit A). Carrier in letter dated June 10, 1963, declined the claim, giving at this time the following reason:

"June 10, 1963

Mr. W. J. Quarles
District Chairman
P.O.D.C.W., Local No. 465
2122½ No. 24th Street
Omaha, Nebraska

Dear Sir:

This will acknowledge receipt of your letter dated June 3, 1963, in connection with a time claim for Claude R. Hunter.

The second paragraph of your letter is incorrect, since this company has always assigned specific men for special assignments as required by the service, and as allowed by the Agreement. This contingency is amply covered in Rule 12 of the current Agreement.

involved a special train on which the work was not covered by any bulletin, and the waiter employees were carefully selected by Carrier without regard to seniority. While the Organization did make claim in that case (Carrier's Exhibit G), the claim was declined by Carrier with specific advice of its position that:

"The Agreement clearly provides that any position under thirty days' duration may be filled without bulletin, and it does not make mandatory selecting the oldest furloughed employees. In fact, over the years, we have chosen whoever we desired for such specials, frequently using assigned men, and there is no provision against this in your agreement.

Also, there are no provisions made for any claim for so-called 'run-arounds', and your claim is declined."

(Carrier's Exhibit G-1)

As pointed out in Carrier's Statement of Facts, the Organization did not further progress that claim and thus, in effect, accepted Carrier's position with respect thereto. This not only confirms the existence of the practice, but also the Organization's recognition and acceptance thereof.

Still further confirmation of the Organization's recognition that the schedule Agreement between the parties did not at the time of this claim restrict the Carrier from selecting furloughed employees for extra work without regard to seniority may be found from its prior and subsequent efforts to obtain by negotiation an extra board rule which would govern such a situation. The very fact that the Organization in August, 1962, considered it necessary to amend the Agreement to govern use of furloughed employees pursuant to its Section 6 notice of August 7, 1962 (Carrier's Exhibit H), is a clear indication that it fully recognized that there was at that time no such limitation in the Agreement. While such a provision was ultimately negotiated by the parties effective June 17, 1963, that was not until after the date on which this claim arose, and clearly was not applicable to the situation, except as an indication of the recognition of the parties that the problem was one for negotiation, rather than contractual grievance.

At the time the claim arose, the Agreement did not limit in any way the right of the Carrier to select furloughed employees for extra, nonbulletined work without regard to seniority or first-in, first-out, status, and this right had been recognized by the parties for many years, both in the traditional practice as well as the continuing attempts of the Organization to obtain a provision in the Agreement to cover such a situation. Carrier's selection and use of Waiter Montgomery in this case, therefore, was in no way a violation of the Agreement or of any contractual rights of the Claimant. The claim is without merit, and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: When the need arose for a waiter on a special train for a period of less than 30 days, Carrier called a furloughed employee who was junior to Claimant. Claimant contends that he was entitled to the work as the senior furloughed employee. Both persons were qualified, so the question before the Board is whether seniority governs in the assignment of work such as was involved here.

Claimant contends that the principle of seniority is applicable. He cites Rules 11 and 12 of the current Agreement in support of his position. These rules read as follows:

"RULE 11.

EXERCISE OF SENIORITY

(a) Seniority rights may be exercised only in cases of vacancies, new positions, reductions in force or displacements.

(b) The exercise of seniority rights to vacancies or new positions is restricted to the seniority district and classes in which employee holds seniority.

(c) In the exercise of seniority, qualifications and seniority will govern; qualifications being sufficient, seniority will prevail, final decision as to qualifications to rest with the district superintendent.

RULE 12.

BULLETINED POSITIONS

All new positions or vacancies shall be promptly bulletined on bulletin boards accessible to all employees in seniority district affected.

Positions of thirty days or less duration shall be considered temporary, and may be filled without bulletining. Positions or vacancies of indefinite duration and known to be of more than thirty days' duration shall be bulletined as temporary positions and filled in accordance with this rule, and again bulletined as soon as known to be a regulation position. Bulletin will show position and description of assignment. Copies of bulletin will be furnished general and district chairmen.

Employees desiring bulletined positions must file a written application with the officer whose name is signed to the bulletin within ten days from the date of bulletin; assignment shall be made within five days from the expiration date of the bulletin and successful applicant placed on the position not later than ten days from date of assignment.

Seniority and qualifications will govern assignment to temporary or regular positions covered by bulletin; qualifications being sufficient, seniority will prevail, final decision as to qualifications to rest with the district superintendent.

Employees assigned to other than regular positions and/or returning after leave of absence may return to former position, or within five days after return, exercise seniority rights to any position bulletined during such absence, subject to the provisions of this rule. Employees displaced by their return may exercise their seniority in the same manner." (Emphasis ours.)

It is Claimant's contention that the portion of Rule 12 set in boldface type should be interpreted to the effect that seniority and qualifications will govern assignment to temporary . . . positions.

Carrier contends that such rule can only be properly interpreted to the effect that only temporary or regular positions which are covered by bulletin should be governed by seniority and qualifications. It is Carrier's contention that seniority is not applicable to special situations of short duration, such as is involved here. They assert a past practice of calling junior furloughed employees. This assertion was not denied on the property. The record also contains a letter from the then General Chairman to the General Manager, which indicates that he agreed with Carrier's interpretation of Rules 11 and 12. Therein he agreed that Rules 11 and 12 were not applicable to facts similar to the facts involved herein.

We are of the opinion that Rule 12 makes seniority applicable only to positions covered by bulletin. Even if the provision could be considered to be ambiguous, the undenied past practice and agreed interpretation would support Carrier's action in this case. For this reason, the claim must be denied.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary