

**Award No. 13511**  
**Docket No. DC-14839**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Preston J. Moore, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 354**

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 354 on the property of the Denver & Rio Grande Railroad Company, for and on behalf of Waiter A. J. Halbert, that claimant be paid for all time he would have earned from November 24, 1963 through November 30, 1963, Trains Nos. 17-18, account of Carrier assigning a junior employee to the trains and on the dates in question, in violation of the Agreement between the parties.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant is an extra board employee. On or about November 19, 1963, Claimant requested of Carrier's sign-out official, an assignment for known vacancies of two (2) waiters on Train No. 17, beginning November 24, 1964, these vacancies were known to be of more than ten (10) days' duration. On November 23, 1964, Carrier's sign-out official contacted Claimant concerning a less desirable assignment. Claimant stated that he preferred to wait until the following day and make the assignment on Train No. 17 as previously requested. Carrier, however, did not assign Claimant to any of the vacancies on the train in question, but instead, on November 23, 1963, assigned two (2) furloughed employees.

Time claim was filed by the District Chairman on behalf of Claimant, claiming compensation for the time he would have earned had he been allowed to make the assignment. When Carrier under date of December 3, 1963 denied the claim, the General Chairman wrote Carrier on January 20, 1964. (Employees' Exhibits A and B.) Carrier's Superintendent Dining Cars again denied the claim. (Employees' Exhibit C.)

On January 27, 1964, Employees appealed this decision to Carrier's Director of Personnel, the highest officer on the property designated to consider appeals, who, after conference, and on March 23, 1964 declined the appeal. (Employees' Exhibits D, E, and F.)

**POSITION OF EMPLOYEES:** The controlling rule in the Agreement between the parties hereto, reads as follows:

**OPINION OF BOARD:** In this dispute, the letter of the General Chairman dated January 20, 1964 represented the claim. The claim was denied by letter of January 22, 1964 and no exception or notice that the decision was not accepted was given within sixty days as required by Rule 16 (b) of the Agreement.

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, . . ."

For this reason, this Board cannot accept jurisdiction.

**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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board does not have jurisdiction over the dispute involved herein.

#### **AWARD**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

Dated at Chicago, Illinois, this 29th day of April 1965.