

Award No. 13659

Docket No. DC-15057

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

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 Western Railroad Company, for and on behalf of Waiter-in-Charge Thomas B. Riggs, that he be accorded a March 5, 1950, seniority date on the Waiter-in-Charge roster of Carrier and compensated for net loss of wages as a result of having to work in lower rated classifications, account of Carrier changing Claimant's seniority date in said classification from March 5, 1950 to March 31, 1955, in violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant entered Carrier's employ as a waiter on July 4, 1947, and was subsequently promoted to waiter-in-charge on February 21, 1950. One George Brooks and Odell Holleman entered Carrier's service on April 17, 1949 and July 5, 1951, respectively, and were promoted to waiters-in-charge on November 20, 1951 and December 26, 1954, respectively. Rule 7 (b) of the Agreement between the parties provides:

" . . . Roster showing name and seniority date of all employees will be posted available for inspection of interested employees during January of each year. Separate rosters will be posted of (1) Dining Car Chefs; Second, Third and Fourth Cooks; and Stationary Pantry-men; (2) Waiters, Waiters-in-Charge. . . . The seniority date of employees, when first appearing upon a seniority roster, shall be subject to protest and correction for a period of 60 days thereafter and if no protest is made during the period provided herein, the date shown thereon shall be considered permanently established."
(Emphasis ours.)

Carrier did not post roster as per the above Rule in 1959, and did not post the 1960 roster until June of 1960. On this roster (1960), Claimant was given a waiter-in-charge seniority date of March 31, 1955. Employees filed claim on behalf of Claimant requesting that he be accorded a seniority date of March 5, 1950, and that he be compensated for net wage loss account of junior waiters-in-charge being allowed to exercise seniority in that classification ahead of claimant.

sented a new claim, your Board has consistently refused to consider such a claim and has dismissed it.

In Award No. 10873, for instance, Referee Levi M. Hall in a situation similar to the one before you stated:

"From the foregoing, we can come to but one conclusion and that is, the Petitioner has departed from the claim which was presented and progressed on the property to such an extent that it is not the same claim that was progressed on the property but in fact the Petitioner has presented a new claim that was never handled on the property.

The presentation by the Petitioner to this Board was improper and leaves the Board with no other alternative than to enter a dismissal Award.

Award: Claim dismissed."

Also see Third Division Awards 11434 and 11484.

For the above reasons, your Board should dismiss the claim before you.

Second, it is the further position of the Carrier that inasmuch as the claim before you has never been presented to this Carrier on the property that the Carrier is not now—standing before your Board—required for the first time to present a position on the merits and defend such a novel claim against it other than to deny the charges, deny that it violated the Agreement, present the facts surrounding the claim before your Board and request that the claim be dismissed, and reserve the right to answer the claim before your Board on the merits without prejudice to its position on the procedural points raised in Carrier's answer after it has had the benefit of learning claimant's position on this new claim before your Board.

The dispute on the property—as the record shows—was presented and considered only as a protest of a seniority date and that Claimant Riggs' Waiter-in-Charge seniority date on the 1964 seniority roster of March 31, 1955, be corrected to show March 5, 1950. Carrier's position in support of its denial of the protest on the property is contained in its March 30, 1964, letter to General Chairman James Mathews. Carrier here adopts its position as there stated as its position here on the claimant's protest as the matter was presented and handled on the property. Carrier's March 30, 1964, letter appears in Carrier's Statement of Facts, above.

For the foregoing reasons, the claim before your Board should be dismissed or denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim submitted to the Board protests Claimant Riggs' Waiter-in-Charge March 31, 1955 seniority date and requests that it be changed to March 5, 1950. Claimant requests compensation for net loss of wages account of changed classification from March 5, 1950 to March 31, 1955.

The Carrier contends the matter was not presented in any specific form as it was progressed on the property and at no time on the property was

a claim remotely similar to the claim presented to this Board. The matter of protest by Claimant as to his seniority date was considered, however the claim "... for net loss of wages as a result of having to work in lower rated classifications, account of Carrier changing Claimant's seniority date in said classification from March 5, 1950 to March 31, 1955, in violation of the Agreement" was never presented or raised on the property. Carrier denies changing the seniority date in question.

The claim submitted to the Board was not handled on the property and therefore must be dismissed: Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. See Awards 12124, 11904, 10193 and 10873.

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 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1965.