# Award No. 13943
# Docket No. DC-15178

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

John H. Dorsey, Referee

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## PARTIES TO DISPUTE:

## JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

## CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

CLAIM I.

Claim of Joint Council Dining Car Employees, Local 385, on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for and on behalf of Buffet Attendants J. L. Johnson, A. L. Beard, W. Williams and A. Grayson; that claimants be paid the difference between what they did earn and what they would have earned, account of Carrier abolishing their regular assignments on Trains 15 and 16 without giving claimants five (5) day notice as required by Article 3 of National Agreement dated June 5, 1962.

CLAIM II.

Claim of Joint Council Dining Car Employees, Local 385, on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for and on behalf of Extra Board Buffet Attendants A. J. Cole, James Cole, W. H. Walton and R. L. Albright; that claimants be paid for all time earned by Buffet Attendants J. L. Johnson, A. L. Heard, W. Williams and A. Grayson in extra service while they were on regular assignment in violation of Article 3 of National Agreement dated June 5, 1962.

EMPLOYES' STATEMENT OF FACTS: Prior to January 31, 1964, claimants named in Claim I were regularly assigned as Buffet Attendants on Carrier's Trains 15 and 16. Article III of National Agreement, dated June 5, 1962, to which Carrier and Employes are parties, provides:

"ARTICLE III.

ADVANCE NOTICE REQUIREMENTS

Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the

provisions of Rule 8(g) of the currently effective Agreement between the parties here in dispute, Section 3 First (i) of the Railway Labor Act and/or Circular No. 1 of the Board and is barred and must be dismissed in its entirety.

Without in any way waiving our position that Claim I is improperly before your Board and barred, the Carrier wishes to point out that through the monetary adjustments made by Superintendent Jones to the claimants in Claim I which compensated them for the difference between what they actually earned during the period February 1 through February 5, 1964 and what they would have earned during that same period had not Trains Nos. 15 and 16 been discontinued between Aberdeen and Deer Lodge effective February 1, 1964, the demands of Claim I were met or satisfied and evidence that the Organization accepted said adjustments in behalf of the claimants in Claim I as being correct and as satisfying or disposing of Claim I is the fact that the Organization did not appeal Claim I to the undersigned, the highest designated officer of the Carrier authorized to receive claims or grievances.

The Carrier submits that Claim II as set forth in the "Statement of Claim" above is a duplication of Claim I, and inasmuch as the demands of Claim I have been met, the demands of Claim II are improper in that they represent requests for payments which have already been made in connection with the same alleged offense. Therefore, it is the Carrier's position that Claim II must be dismissed in its entirety because it is improper and barred.

Without in any way waiving our position that Claim II is a duplication of Claim I and, therefore, is, under the circumstances, improper and barred, the Carrier submits that there is absolutely no basis for Claim II because, as is evident from the facts set forth in "Carrier's Statement of Facts", no extra board employes, including the claimants in Claim II, would have stood for or could have been used for the service performed by Attendants Johnson, Heard, Williams and/or Grayson during the period February 1 through February 5, 1964.

It is the Carrier's position that for the reasons outlined herein the instant claims are barred and must be dismissed, and it is our further position that the instant claims are in no way supported by past practice, schedule rules or agreements, and we respectfully request that the claims be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It appears in the record that Claim I was settled on the property. We will dismiss the Claim.

From our study of the record we find that Claim II fails for lack of proof of violation of the Agreement. We will dismiss the Claim.

**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 has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim I dismissed.

Claim II dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.