

Award No. 13960
Docket No. DC-15380

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

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

STATEMENT OF CLAIM: Time claims submitted in behalf of Dining Car Steward J. E. Stevens for various dates for the bonus and clothing allowance, when not permitted to work an assignment of his choice and junior men worked the assignments on which the claimant requested to be placed. The claims are for dates commencing June 6, 1964 and subsequent dates of record handled in accordance with the Time Limit on Claims Agreement.

EMPLOYES' STATEMENT OF FACTS: The Brotherhood of Railroad Trainmen (hereinafter referred to as the Union) has an Agreement with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the Carrier) governing rates of pay and working conditions of Dining Car Stewards in accordance with the Railway Labor Act. The claimant Dining Car Steward J. E. Stevens was employed by the Carrier as a Steward and has a seniority date shown on the seniority roster as May 4, 1939, or in other words, the claimant worked for the Carrier for approximately twenty-six (26) years in the capacity of Dining Car Steward and still holds seniority as such.

The claimant in this case made a request upon the Carrier to displace a junior Steward assigned to Trains 103 and 104. The Carrier denied claimant Stevens' request to use his displacement rights and exercise seniority on the above identified trains on the basis that Mr. Stevens gave up his right to work on these trains by accepting a letter dated December 27, 1961, written by Mr. W. R. Jones, Sleeping and Dining Car Superintendent, representing the Carrier.

To substantiate the above the Carrier's Superintendent wrote the following letter dated June 17, 1964, to the claimant's Local Chairman, Brotherhood of Railroad Trainmen, Mr. E. G. Klemz:

"Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Sleeping and Dining Car Department
2801 W. Grand Ave., Chicago, Illinois

June 17, 1964
File: 516-Stevens, J.E.-J-5

tional service requirements on the Steward positions on the dome diners on trains Nos. 103-104 and 105-106, requirements which pay to the occupant of such Steward positions a monthly bonus over and above the agreed to monthly rates of pay.

In view of the foregoing, but particularly in view of Mr. Stevens' voluntary agreement, in writing, that in recognition of his reinstatement to service he would not and could not " * * * displace on the dome diners on either trains #103-104 or #105-106, which are bonus assignments", the Carrier submits that there is absolutely no basis for the instant claim and we respectfully request that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant sought to exercise his seniority rights, as prescribed in the Agreement, when on May 27, 1964, he made request to displace a junior steward on Carrier's Trains Nos. 103-104, beginning on June 6, 1964. Carrier denied the request.

During the pendency of a prior dispute in which Claimant herein was Claimant therein, Claimant as an individual employe "accepted" a conditional reinstatement which Carrier says constituted a waiver of seniority rights, by Claimant, to displace on Trains Nos. 103-104. In support of its position, Carrier has made a part of the record the following writing:

"December 27th, 1961
File: 516- Stevens-JE- J-5

Mr. J. E. Stevens

Dear Sir:

In consideration of your recent appeal and that of others in your behalf and because of your many years of service, and in view of your assurance that you will properly perform your assigned duties in the future and because it is my hope that the discipline administered has served its purpose, this is to advise that you are hereby reinstated on a leniency basis with full seniority rights effective December 27, 1961.

Your reinstatement is also made with the understanding that you will be permitted to return to your regular assignment on the Coffee Shop Car on train 103-104 or on either Train #5-6 or Train #3-2 if you so desire, but you will not be permitted to displace on the dome diners on either train #103-104 or #105-106, which are bonus assignments.

Yours truly,

/s/ W. R. Jones
Superintendent

Accepted:

/s/ J. E. Stevens"

It has been firmly established in opinions of the Supreme Court that an individual employe in a collective bargaining unit may not by agreement with the employer derogate the terms of the collective bargaining agreement.

Petitioner herein has the right and obligation to police the administration of the Agreement and insist upon the Carrier complying with its terms; and, the right and obligation may not be impaired by an individual employe. Consequently, the so-called waiver in the December 27, 1961, writing, *supra*, is void. We will sustain the claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

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

ATTEST: S. N. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November 1965.