

Award No. 14265
Docket No. DC-15313

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter-in-Charge Alex Jones that he be paid the difference between what he did earn and what he would have earned if he had been called in turn and allowed to make assignment on Carrier's Train No. 3, June 6, 1964; Carrier's failure to assign claimant to said train being in violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: The facts underlying this case are not in dispute. Both Claimant and one Adolphus Favors were extra board waiters-in-charge. Each had completed their prior assignments on June 1, 1964. As per the extra board rule and the agreed upon practices of the parties, Mr. Favors was No. 1 on the extra list and claimant was No. 2. Had the two employes been assigned correctly, Mr. Favors should have been assigned to Trains 11-14 on June 5, 1964, and claimant to Train No. 3 on June 6, 1964. Trains 11-14 (The Peoria Rocket) calls for a tour of duty from Chicago to Peoria and return, and Train No. 3 from Chicago to Los Angeles and return. The difference in the number of hours accumulated on each assignment is substantial.

Carrier, however, being unable to contact Mr. Favors in time for him to make his assignment on Trains 11-14, assigned claimant in his stead. Carrier then assigned Mr. Favors to claimant's assignment, in spite of the fact that claimant would return to Chicago from Trains 11-14 in time to make his correct assignment on Train No. 3.

Employes filed a time claim on behalf of claimant requesting that claimant be paid the difference between what he earned on Trains 11-14 and what he would have earned on Train No. 3. The claim was handled to conclusion on the property and is properly before your Board (Employes' Exhibits A, B, C and D.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is an Agreement in effect between the Chicago, Rock Island and Pacific Railroad Company and its Employees represented by the Dining Car Employees' Union, Local No. 849, AFL-CIO, bearing an effective date of April 1, 1962 on file with your Board, which by this reference is made a part of Carrier's submission.

2. Claimant, Alex Jones, as well as the other employe involved, Mr. Favors, are assigned to Carrier's Waiter-in-Charge extra board working out of Chicago, Illinois. Both men live in Kansas City and must be called at their homes from Chicago for assignments.

3. The specific facts surrounding the Employees' claim are set out in Carrier's Exhibits A through D which cover the handling of this claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Alex Jones, and one Adolphus Favors were both extra board waiters-in-charge. They both had completed their prior assignments on June 1, 1964. Favors was No. 1 on the extra board list and Claimant was No. 2.

There was an assignment available as waiter-in-charge on Trains 11-14, which required three successive round trips on June 5, 6 and 7, 1964. There is some dispute as to whether each successive round trip constitutes a separate assignment, or whether the three trips actually comprise one assignment. We are of the opinion that the preponderance of evidence proves that this three trip cycle actually constitutes only one assignment. The Carrier was unable to locate Favors in time for him to protect this assignment. The Organization admits that the Carrier used due diligence in attempting to locate Favors.

Carrier finally called Jones, No. 2 on the waiter-in-charge Extra Board and assigned him to protect the assignment on Trains 11-14, June 5, 6 and 7, 1964. Carrier then contacted and assigned Favors as waiter-in-charge to Train No. 3 on June 6, 1964. It is important in this case to keep in mind that these men were both working off Carrier's Extra Board. Neither of them could claim any particular assignment for his very own. They were supposed to be assigned, under the rules, on a first in, first out basis. In this instance however, the first in man was unavailable to protect the assignment. Therefore, the second man was called. When an extra man returns from an assignment, he should be placed at the foot of the Extra Board list. Apparently this was the procedure followed in this case. We find no rule which would, in effect, allow the No. 2 man to protect an assignment, which the first in man could not protect, and at the same time, keep his place on the Board, as if he had never been assigned in the first instance.

We are in sympathy with Claimant's assertion that he was unable to make as much money on the assignment which he covered, as he would have made, if the first in man had been available when called. However, this does not seem to be the fault of the Carrier. Therefore, since this is not a Board of equity, and since we are unable to find a violation of the Agreement rules, the claim will be denied.

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; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.