

Award No. 16310
Docket No. DC-16903

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 233
THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 233 on the property of the New York Central Railroad Company, for and on behalf of Waiters D. S. Bright and John Holman, and all other employees similarly situated, that they be paid the difference between what they did earn and what they would have earned as extra board employees had Carrier assigned claimants to its Train No. 26 on February 1, 1966, instead of regular employees in violation of the Agreement between the parties.

EMPLOYEES' STATEMENT OF FACTS: The instant dispute arose and was handled to a conclusion on the property via conference and the following correspondence.

1. Letter of February 8, 1966 from General Chairman L. L. Lyman to Mr. J. P. Dowey, Superintendent of Dining and Sleeping Car Service:

"Dear Sir:

This will confirm our conversation Monday, February 7, 1966, concerning doubling regular assigned employees on Train 26 February 1, 1966. It was my understanding that what caused the carrier to take this action was Train 26 arrived in New York on the 31st of January too late to use the same crew on the return trip, and the East End had to double the regular crew out of New York because they did not have sufficient extra employees to make up a crew. This situation was brought about by the inclement weather.

The Chicago district had a surplus of extra employees, and in our opinion the regular crew should not have been used on Train 26 February 1. We are aware that all schedules were interrupted during the bad weather.

Rule 4(g) - Filling Assignments, Section 25, reads as follows:

'At any time when the extra board has been exhausted and additional employees are required to perform extra service, it will be permissible to use regularly assigned employees to perform such extra work. Use of such employees shall not

When calling the crews in the short time available on January 31, it was possible to contact only three of the regularly assigned employees at Chicago in this line, namely, Chef J. Rusch and Waiters H. McAllister and W. Miller. The balance of the crew was, therefore, assigned from the extra board.

There is attached hereto as Carrier's Exhibit B letter dated February 8, 1966 from L. L. Lyman, General Chairman, Local 233, to J. P. Dowey, Superintendent Dining and Sleeping Car Service, in which the Organization takes the position "that the entire crew [of Train 26] on February 1 should have been extra employees and the regulars that were used took work that rightfully belonged to extra employees", and submits claim on behalf of Waiters Bright and Holman, as well as an unnamed chef, who, it is alleged, were deprived of work by the assignment to this train of Waiters McAllister and Miller and Chef Rusch. Mr. Dowey denied this claim on February 18. (Carrier's Exhibit C.)

On February 23, 1966, Mr. Lyman wrote A. H. Smith, Manager Dining and Sleeping Car Service, the final officer designated by Carrier to handle such matters on the property, appealing from Mr. Dowey's decision. Copy of this communication is attached hereto as Carrier's Exhibit D.

Claim of the Organization in this matter was discussed in conference at Chicago, October 18, 1966 by General Chairman Lyman and I. L. Austin, who, effective June 1, 1966, had succeeded A. H. Smith as Carrier's Manager Dining and Sleeping Car Service. On November 7, 1966, Mr. Austin wrote Mr. Lyman denying the appeal. Copy of this letter is attached hereto as Carrier's Exhibit E.

On December 1, 1966, Carrier received copy of notice of intent letter written by Richard W. Smith, Secretary-Treasurer, Joint Council Dining Car Employees, to the Executive Secretary, Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts involved in this dispute are not in issue. Carrier operated the Twentieth Century Limited, Trains 25 and 26, between Chicago, Illinois and New York City, New York. Train 25 departed from New York at 6:00 P.M. daily and arrived in Chicago at 9:00 A.M., whereas Train 26 departed from Chicago at 4:30 P.M. daily and arrived in New York City at 9:30 A.M. Four dining car crews were required to fill this line with two working out of Carrier's Chicago District and two out of its New York District. On January 31, 1965, a New York crew was due to arrive in Chicago on Train 25 and depart on Train 26. A Chicago crew was scheduled to arrive in New York on Train 26 and depart on Train 25. The other Chicago and New York crews were laying over at their respective home terminals. Extreme weather conditions on January 31, 1965 delayed the arrival of both trains at their respective destinations, and Carrier assigned the Chicago crew on lay-over to Train 26 and the New York crew on lay-over to Train 25. Thereafter, Carrier assigned the crews on the delayed trains to respectively cover Train 26 from Chicago and Train 25 from New York the following day, February 1, 1965.

Petitioner contends that Carrier's assignment of the Chicago crew to Train 26 on January 31, 1966 was a violation of the applicable Agreement because the assignment was part of the regularly scheduled assignment of the New York crew, which is in a different seniority district and that em-

ployes off Carrier's extra board should have been assigned to the disputed work.

Rule 4 (g) of the applicable agreement provides, in part, as follows:

"Except as otherwise provided in this agreement, individual vacancies expected to be of 30 days' duration or less shall be given to employes on the extra list if they are available and qualified for service on the assignment."

It is the contention of Petitioner that the positions in the crew on Train 26 departing Chicago, Illinois on January 31, 1965 were individual vacancies of less than 30 days' duration under the pertinent provisions of Rule 4 (g).

Carrier contends that no "individual vacancies" existed to be filled from the extra board as the entire Chicago crew was called on January 31, 1965 to advance one (1) day in their regular line because of an emergency situation. Furthermore, Carrier points out that the disputed assignment did not deprive any of the regular employes assigned to the four dining car crews on Trains 25 and 26 of the four calendar days off duty to which they are entitled under Rule 3 (h) of the applicable Agreement.

Both parties agree that an emergency situation existed which required immediate action on the part of Carrier. This Board has consistently recognized that a Carrier in an emergency has broader authority in assigning employes than under normal circumstances. (Awards 14372, 13566, 12299, 9394, and others.) Consequently, it is unnecessary for the Board to determine whether the disputed assignment of work might have resulted in a denial of extra work to employes off the extra board under normal conditions. The record clearly discloses that unforeseen weather conditions substantially impaired Carrier's movement of important traffic, and that Carrier exercised prudent management by assigning such employes as the emergency situation required to Train 26 on January 31, 1965. Accordingly, 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 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 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 17th day of May 1968.

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