



Award No. 17005

Docket No. DC-17767

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees on the property of the New York, New Haven & Hartford Railroad for and on behalf of Train Salesmen and Bartenders on Commuter Cars in the employ of this Carrier and represented by the Organization, that they be paid holiday pay as provided in Article III of the Mediation Agreement dated November 20, 1964.

EMPLOYEES' STATEMENT OF FACTS: On or about May 31, 1963, formal notice under the Railway Labor Act was served on the Carrier involved in this dispute and all other Carriers with which the Organization has agreements. Appendix "A" of that Notice contained a proposal for holiday pay, which was disposed of by Article III of the National Mediation Agreement of November 20, 1964. This Article provides:

"ARTICLE III.

ADJUSTMENT FOR DINING CAR EMPLOYEES

HOLIDAY PAY

In addition to the wage adjustments provided for in Article I of this Agreement, effective January 1, 1965, the monthly rates of employes represented by the Hotel and Restaurant Employees and Bartenders International Union shall be adjusted by adding the equivalent of 16 pro rata hours to their annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. No party to this agreement shall serve any notice or proposal or progress any notice or proposal for the purpose of changing the provisions of this Article III to become effective prior to January 1, 1967."

Carrier refused to apply above-quoted to its Commuter Bar Attendants and its Train salesmen, both of which classes are represented by this Organization and who were covered by the May 31, 1963 Notice; accordingly, Employees made application, under Section 5, First, of the Railway Labor Act, to the National Mediation Board for an interpretation of the Agreement. After several communications in which the parties set forth their respective positions

Nothing further was heard from the Organization until they petitioned the National Mediation Board on October 27, 1967, for an interpretation of the issue here involved under Section 5. Second of the Railway Labor Act, as amended. The Board considered the matter and under date of January 12, 1968, notified the parties by joint letter that the subject of this dispute is one to be handled under Section 3 of the Railway Labor Act, as amended. Accordingly, the Board closed its file on the matter.

On February 16, 1968, Secretary-Treasurer Richard W. Smith served notice of intent to file ex parte submission in this dispute.

Copy of the Agreement executed May 5, 1964, applicable to bar attendants in Commuter Bar Service is on file with your Board. The Carrier is, however, attaching copy marked as Exhibit M for the ready reference of your Board.

Copy of Agreement effective September 1, 1949, (Section 3 governs Train Salesmen) between this Carrier and the Organization is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The first notice that Carrier had that the instant claim was to be presented to this Board, was when a copy of the Petitioner's notice of intent, dated February 16, 1968 was received. It was never progressed on the property through the usual channels to the highest officer of Carrier designated to handle such matters, hence it is fundamentally defective in that it does not comply with Section 3, First (i) of the Railway Labor Act as well as with the provisions of Circular No. 1 of the National Railroad Adjustment Board. Thus it is clear that this Board lacks jurisdiction to consider the substantive merits of this claim and we will accordingly dismiss it.

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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March 1969.

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