Award No. 18407
Docket No. MS-18821

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

MR. NICHOLAS DE MARIA

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission (on March 16 to April 16, 1970) covering an unadjusted dispute between me and the New York Central Dining (Now Penn Central) involving the question Dining Service New York Central) Car Account office Penn Central.

In the summer of 1964 we were notified that the Dining Service in Buffalo would be closed on November 1, 1964. After inquiring at other offices of the Railroad I found a job at the Car Accounting Office in Septmeber. I was accepted, and told Mr. H. C. Cassell, Assistant Superintendent of the Dining Service, when I could report. Mr. Kates also talked with Mr. Cassell, and informed him they would release me anytime I was needed without losing any benefits.

I left a month before the Dining Service was closed. I was then told that I was being taken off the Dining Car Roster because I left ahead of time. I didn't sign any resignation papers from the Dining Car Service.

I asked a labor representative to get me a hearing on this but Mr. Fred J. Welka, representative of our union, told me that I got into this mess, and that I should handle it myself. He said he didn't want any part of it because he had told all of us that he was arranging for us to work in the baggage room, and that we could start there before the closing of the Dining Service.

I went to a hearing at the Union Executive Board Meeting in New York, and was denied the return of my service. While I was there I saw Mr. A. H. Smith, manager of the Dining Service and we had a long talk about my seniority with Mr. I. Austin. They told me to have my labor representative get in touch with them, and they agreed to put me back on the roster. When I spoke with my labor representative, Mr. Welka, he refused to do anything about it.

OPINION OF BOARD: Claimant Nicholas De Marie entered the Carrier's service on December 5, 1935, and established seniority from that date on the BRAC roster in the Dining and Sleeping Car Service Department, Buffalo, New York. The employes of that department were advised in the summer of 1964 that the Dining Service in Buffalo would be discontinued on

November 1, 1964. In anticipation of the closing of his department, Claimant sought work in other departments, was accepted for a position in the Car Accounts Department at Buffalo and on October 1, 1964, he was placed on the seniority roster applicable to that department. Since he voluntarily transferred from one department to another at a time when he was regularly assigned, his name was stricken from the Dining and Sleeping Car Service Department roster in accordance with the requirements of the Agreement as of the date Claimant assumed his new duties.

Claimant contends that at the time he found his new position and inquired about his transfer rights, he was orally advised by officers of the Carrier that he could transfer "without losing any benefits." Claimant maintains that this statement, upon which he relied, amounted to an agreement between him and the Carrier that his seniority on the Dining and Sleeping Car Service roster would be unaffected by his transfer.

Claimant did not avail himself of any of the grievance handling machniery provided for in thhe Agreement. The first formal claim that he filed was with this Board. The Railway Labor Act, Section 3, First (i) which created this Board and defines the functions and jurisdiction of this Board, clearly prevents us from deciding a case which was not considered on the property in the agreed upon manner for the handling of disputes. This Board can only hear appeals from decisions which emanate from the established grievance procedure on the property. We do not have original jurisdiction of disputes. Accordingly, this Board is without power or authority to render a decision in this case.

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 no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.

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