

SPECIAL BOARD OF ADJUSTMENT NO. 605

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PARTIES ) Hotel and Restaurant Employees and Bartenders International  
TO ) Union  
DISPUTE ) and  
The Denver and Rio Grande Western Railroad Company

QUESTIONS  
AT ISSUE:

- (1) Whether or not the Carrier can require protected employees to take jobs outside of their class and craft for which they hold no rights or seniority?
- (2) Shall the Carrier compensate protected employees, who have refused to take such assignments, for all monies due, under the provisions of the February 7, 1965 Agreement?
- (3) Shall the Carrier compensate employees who have been forced to take jobs outside of their craft and class, for monies they should have received under the provisions of the February 7, 1965 Agreement?

OPINION  
OF BOARD:

I

With respect to the Questions at Issue relating to compensation (Questions 2 and 3), the Board finds, consistent with its prior awards, that the claims are barred.

By letter to Carrier's highest officer dated May 1, 1970, the General Chairman asserted that protected employees were not obligated to take assignments outside their class and craft in order to preserve their protected status. There was no claim for compensation. Carrier's highest officer, by letter dated June 18, 1970, rejected the Organization's claim. On or about September 15, 1972 the matter was submitted to this Disputes Committee by the Organization.

The questions relating to compensation cannot be considered by this Board; those claims are barred. See Award Nos. 131, 299, 310, 311, and Interpretation of Award No. 318.

II

Question at Issue No. 1 relating to the issue of whether or not Carrier can require protected employees to perform work<sup>1/</sup> at Carrier's hotel-restaurant in order to preserve their protected status involves an interpretation of the February 7, 1965 Agreement, and the Board is not bound by time limit considerations.

1/ The Organization asserts that these were "jobs outside of their class and craft for which they hold no rights or seniority."

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The record shows that for several years Carrier has utilized employees of this Organization to perform duties as cooks at its hotel-restaurant at Bond, Colorado.

Carrier has conceded that the work performed at the Bond Hotel "has not been contracted out or bargained away by the carrier and is not under any union contract" (Underscoring added.) Carrier argues, however, that since there is no exclusive right to such work it may assign the work to anyone and does not constitute work outside class and craft; particularly as in this case "cooks are being used as cooks."

Article II, Section 3, of the February 7, 1965 Agreement provides in part:

"When a protected employee is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules \* \* \* for any other temporary assignments which do not require the crossing of craft lines. \* \* \* (Underscoring added.)

The Scope Rule of the Agreement between these parties states:

"The following rules govern rates of pay and working conditions of Dining Car Chefs and Cooks, Buffet Lounge Cooks, Dome Car Buffet Cooks, Cook-Attendants, Dining Car Pantrymen, Waiters in Charge, Waiters, Waiter-Attendants, Lounge Car Attendants and Buffet Attendants. This Agreement does not apply to Cooks, Porters and combination Cook-Porters on business cars."

While such rule is general in the sense that it does not define the work of these positions, it is nonetheless specific in that it identifies the type of facility on which the work is to be performed. The "existing seniority rules" therefore encompass only those facilities that are specifically enumerated in the Scope Rule.

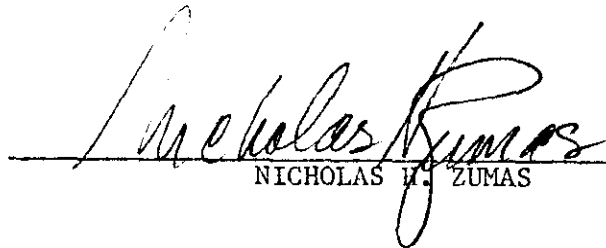
The fact that employes acquiesced to work at the Bond Hotel and Restaurant for several years prior is of no consequence.

#### AWARD

1. Carrier may not require the employes herein to work at the Bond Hotel and Restaurant in order to preserve their protected status. (Question 1).

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2. The claims for compensation (Questions 2 and 3) cannot be considered by this Board, and are therefore dismissed.

  
NICHOLAS H. ZUMAS

Dated: Washington, D. C.  
June 7, 1973