

NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

WILLIAM H. DEMPSEY, Chairman

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D. P. LEE, General Counsel

T. F. STRUNCK, Administrator of Disputes Committees

August 23, 1976

Mr. Nicholas H. Zumas
1990 M Street, N. W.,
Washington, D. C. 20036

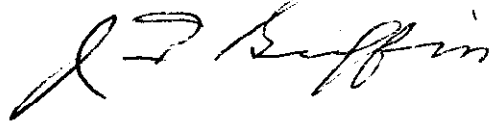
Mr. Irwin M. Lieberman
91 Westover Avenue
Stamford, Connecticut 06902

Mr. Robert M. O'Brien
73 Tremont Street
Boston, Massachusetts 02108

Gentlemen:

There are attached two copies of Award No. 401, dated August 20, 1976, rendered by Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 National Agreement.

Yours very truly,



cc: Chairman - Employees' National
Conference Committee (10)

Messrs:

R. W. Smith (5)
C. L. Dennis (2)
E. J. Neal (2)
S. G. Bishop (2)
C. J. Chamberlain (2)
H. C. Crotty (2)
M. B. Frye (2)
W. W. Altus (2)
J. J. Berta (2)
R. K. Quinn, Jr. (3)
W. F. Euker (2)
T. F. Strunck (2)

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Hotel and Restaurant Employees and Bartenders
TO) International Union
DISPUTE) and
Union Pacific Railroad Company

QUESTIONS AT ISSUE: (1) Whether the Employee J. R. Broadnax should be compensated at the protected rate determined by this Board pursuant to the answer to Question One, Award No. 382, Case No. H&RE-27-W, for the period November 22, 1974, for as long as he refused to report for an assignment cooking on a Union Pacific Outfit Kitchen Diner Car; and,

(2) Whether, thereafter, the said employee should be compensated at the aforesaid rate so determined in addition to whatever compensation he may have earned in any employment to which his seniority involved in Case No. H&RE-27-W did not attach.

OPINION OF BOARD: Claimant was offered employment, on a temporary basis, as a Cook with Carrier's Outfit dining car service on November 22, 1974. Claimant refused the service contending that the claimant's seniority as a Dining Car Chef did not embrace assignment as Outfit Car Cook. As a consequence, Claimant was removed from service as a protected employee until January 20, 1975 when he returned to service and accepted employment as Outfit Car Cook.

Claimant's status as a protected employee was previously established by Award No. 382 of this Board that held that Claimant was a protected employee and was covered under the provisions of Article IV, Section 2 of the February 7, 1965 Agreement.

The question to be resolved is whether Carrier may require a protected employee to accept a temporary assignment in the same craft to which his seniority did not attach in order to maintain his protected status.

Article II, Section 3, of the February 7, 1965 Agreement provides in pertinent 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."

In Award No. 66 this Board held:

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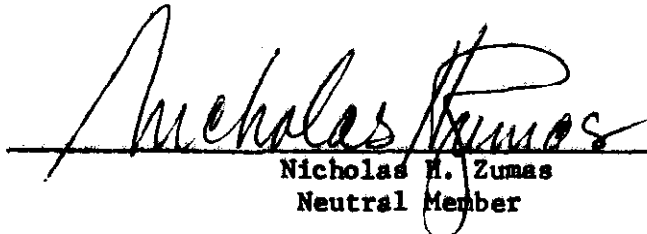
"Where it was intended that the crossing of craft lines could not take place, it was stated succinctly. An intention to prohibit the crossing of seniority lines would have been as specifically stated, if intended. Consequently, so long as there is no showing of a violation of 'existing seniority rules', it must be held that Carrier acted in accordance with the Agreement in its assignments on the days in question."

There is further reason to reject the Organization's contention: If, as the Organization asserts, a temporary assignment did not extend to any work not embraced by an employee's seniority, then the language "which do not require the crossing of craft lines" is mere surplusage and without meaning. The Board does not agree.

Finally, the Organization's reliance on Award No. 358 of this Board is misplaced. In that award we held that a Carrier could not require employees to work as cooks in its hotel-restaurant at Bond, Colorado because the existing seniority rules "Therefore encompass only those facilities that are specifically enumerated in the Scope Rule." In the instant dispute, however, the agreement classification of "Cook" is common to Dining Cars and Boarding Outfits.

AWARD:

The answer to both questions is in the negative.



Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
August 20, 1976