

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

**DINING CAR COOKS AND WAITERS INDUSTRIAL ASSOCIATION
MISSOURI-KANSAS-TEXAS LINES**

STATEMENT OF CLAIM.—

"Shall waiters, who are required to vend certain articles (other than food prepared in Dining Car), be paid additional compensation for such service?"

STATEMENT OF FACTS.—In their ex parte submission of this issue the employees stated that they are waiters employed by the carrier to wait upon table and to do other work in the dining car service ordinarily performed by waiters, but that on or about February 1, 1936, ten of their number, one in each of ten crews, were required to distribute and rent pillows to passengers, which tasks had previously been performed by train porters, and to "work" the day coaches selling candies, fruits, and beverages, which tasks had previously been performed by employees of the Union News Company, under contract with the carrier. In the carrier's submission the facts were stated as follows: "Dining Car Waiters are required to vend coffee, sandwiches, cigars, cigarettes, chocolate bars, gum, apples, bananas, oranges, coca cola, and Dr. Pepper in day coaches. The coffee is prepared in the dining car kitchen. The sandwiches are prepared by the waiters in the dining car pantry, and the other items are carried in the dining car stock. Waiters have always served more or less of the items in both the dining car and the coaches and sleepers. The proceeds for the sale of the items in coaches and sleepers are delivered to the Dining Car Steward in the same manner as the proceeds from sales in the dining car. On two or three short runs, dining car waiters distribute and collect pillows in day coaches. The service is free to revenue passengers and a charge of fifteen cents is made for non-revenue passengers. The proceeds from the charges for pillows is extremely small and are delivered to the train conductor."

An agreement between the parties bearing effective date of February 1, 1927, together with Addendum No. 1, effective January 1, 1929, was placed in evidence. Article 12 of this agreement as amended provides rates of pay of \$64.00 to \$69.00 per month, depending upon length of service, for waiters, and of \$90.00 to \$95.00 per month, depending on length of service, for waiters in charge.

POSITION OF EMPLOYEES.—The employees concede that waiters had always been required to sell coffee and sandwiches, but they contend that the new duties required of them—in vending articles other than food prepared in the dining car—which had previously been performed by porters and by employees of the Union News Company renders their service comparable with that of waiters in charge and entitles them to the rates of pay of waiters in charge. In support of this position, the employees declared: "We justify our contention that the waiters performing the additional service should be classified as Waiters in Charge because waiters in charge are presumed to perform service other than the mere waiting upon tables. The waiters in charge are in direct contact with the public, in the matter of making change, looking after 'things' generally, adjusting complaints, etc., in other words, they are supervisors, so to speak. The same is true of the waiter who 'works the train.' He comes in direct contact with the public, and is not under the immediate supervision of the Dining Car Steward. He solicits the sale of his wares, and urges their

purchase. He completes the transaction without the help or the assistance of the Steward."

POSITION OF CARRIER.—The carrier contends that there is no provision in the agreement which prescribes the duties to be performed by waiters; that the tasks in dispute are similar to those generally required of dining car employees; that most of the items involved had been handled by dining car employees for many years; that the addition of new articles to the dining car stock does not change the character of the service; that the classification and rates of pay of waiters in charge are applicable only to employees in charge of a dining car which has no steward; that stewards were employed on all the dining cars involved in this dispute; and that the complaining employees are in fact waiters and not waiters in charge.

OPINION OF BOARD.—The claim as set up by the employees may appear, when superficially considered, to involve a request for an increase in rates of pay. If this were the real nature of the dispute—that is, if different rates than those specified in the agreement for waiters or for waiters in charge were sought by the employees—the objective could be lawfully accomplished only through negotiation under Article 15 of the agreement or by resort to the National Mediation Board under Sections 5 and 6 of the Railway Labor Act as amended. In point of fact, however, what the employees are here seeking is an application of Article 12 of their agreement specifying rates of pay for waiters and for waiters in charge under the circumstances described in the record. It is on this basis that this Board has assumed jurisdiction, without protest from the carrier.

In effect, the employees urge: first, that the rates of pay for waiters are not applicable, since those rates were negotiated for a service the character of which has been materially changed for the particular employees involved; and second, that the service required of these particular employees corresponds to that required of waiters in charge and hence entitles them to the rates of pay of waiters in charge. That the requirement that waiters vend candies, fruits, and beverages previously sold by the employees of the Union News Company constitutes a material change in the character of the service seems clear. It is true that no objection is raised to this requirement with respect to coffee and sandwiches; but these are not only articles of food prepared in the dining cars, but the very fact that the requirement with respect to them prevailed prior to the negotiation of the agreement and throughout the period of its operation renders it a reasonable constituent of the duties of waiters. The issue is not as to whether new items, including candies, fruits, and beverages, may not properly be added to the dining car stock, to be delivered by waiters, upon order, to passengers in coaches; it is whether the task of vending articles, previously performed by other employees, may properly be required of waiters under rates of pay established for dining car service as traditionally rendered. While the agreement does not specify what the duties of waiters shall be, it is reasonable to assume that the duties ordinarily performed by waiters were in contemplation between the parties when the agreement was negotiated. It appears then, that the employees have a just grievance under the agreement which the carrier should seek to remove. The employees submit that the rates of pay of waiters in charge are applicable under the circumstances disclosed, and that their grievance would be removed by the payment to the employees involved of the rates of pay of waiters in charge. If this Board could find that these employees are in fact waiters in charge, though designated waiters, it would be competent to order the payment of the rates of pay of waiters in charge, despite the fact that the employees' formal claim is submitted as a question and does not specifically mention their request for the rates of pay of waiters in charge. It is not clear, however, whether or not the employees involved should be classified as waiters in charge. There are various resemblances between the duties of those employees and those of waiters in charge, but the evidence on this issue is not only meager but too general to be conclusive. It is not within the authority of this Board to fix a rate of pay not specified in the agreement, except by way of review of special adjustments provided for in the agreement itself, and hence, despite its recognition of the existence of a just grievance, it does not attempt to set any rate of pay for the employees involved in this dispute. It is open to the parties to adjust their differences in conformity with the above conclusions, on the basis of existing or new classifications, or failing adjustment to submit

the issue again on a more adequate record as to the character of the service of waiters and of waiters in charge.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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;

That the requirement that the employees involved vend candies, fruits, and beverages in coaches under the rates of pay provided in the agreement for waiters constitutes a just source of grievance for these employees; and

That the evidence of record is insufficient to determine whether these employees are entitled to the rates of pay provided in the agreement for waiters in charge.

AWARD

Case remanded to the parties for adjustment in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 25th day of January, 1937.