

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

**DINING CAR COOKS AND WAITERS INDUSTRIAL
ASSOCIATION**

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of the System Committee of the Dining Car Cooks and Waiters Industrial Association that Cooks James Baity, David Greenlee, Robert Johnson and J. Shelton performing service in the Kansas City pool are second cooks, and as such are entitled to that rate of pay retroactive to December 17th, 1937."

EMPLOYEES' STATEMENT OF FACTS: "James Baity, David Greenlee, Robert Johnson, and J. Shelton, are cooks employed by the Missouri-Kansas-Texas Lines in its Dining Car service, and they are assigned to perform service in the Kansas City pool. The Kansas City pool operates between Kansas City, Mo., and Ft. Worth, Texas on trains 27-(4&5) (11&18) (6&26) with appropriate layovers enroute. The kitchen crew in the said pool consists of two employes, the chef and one other. The carrier pays the second employe as a Third Cook. Each of the aforesaid is the second employe in the kitchen.

The duties of a Third Cook, consists of preparing all vegetables and other materials for cooking and performing other similar duties assigned by the Chef.

The duties of a Second Cook consists of working on the range, cooking all vegetables, omelets, entries, etc., and performing all other general fry work."

"This will certify that there is an agreement in effect between the respective parties to this dispute, and which is dated February 1st, 1927, and which is on file with the Board together with subsequent addendums."

POSITION OF EMPLOYEES: "Article No. 12 of the agreement as amended, effective December 1, 1937, establishes the following for employes performing kitchen service on Dining Cars:

Chefs
Second Cooks
Third Cooks
Fourth Cooks

"James Baity, David Greenlee, Robert Johnson and J. Shelton are carried by the carrier as Third Cooks and paid as such, notwithstanding their duties are that of a second cook as evidenced by the following statement of the employes:

'We are agreeable to settling the claims of Baity and the others involved based on the facts of the service in each case; but the claim you made for them was a blanket one for second cook's rate from December 1, 1937.'

"Exhibits B, D, and F, are letters of the petitioner to the Carrier, which are submitted for the information of the Board.

"The claim being directed toward having the Board declare parties in question as second cooks, apparently without regard to character of work performed, we respectfully request that the Board deny the claims of the petitioner."

OPINION OF BOARD: The prevailing agreement in effect between the parties to this dispute provides rates of pay for chefs, second cooks, third cooks, and fourth cook. It contains no rule defining the duties of each of these separate classifications and it does not obligate the carrier to maintain a kitchen crew of any minimum number of men or from any particular classifications.

The kitchen crews on the runs involved in this dispute consisted of two men, one classified as a chef and the other as third cook. Petitioner contends that when two men are employed in the kitchen one should be classified as a chef and the other as second cook. The Board is unable to agree with this contention. The service performed by the employee determines his classification. The agreement provides no other basis of classification and the Board is without authority to supply one.

Petitioner further contends that the employees in question actually perform the duties of second cook. As pointed out above, the agreement contains no rule defining the duties of employees in each classification. These are stated by Petitioner in the record and not denied by carrier. Petitioner further states they are well known to both parties and this likewise is not denied by carrier. There is sufficient unchallenged evidence in the record to show that second cook's work is being performed by the employees in question with sufficient regularity to entitle them to second cook's pay. The claim will be sustained.

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; and

That the Carrier violated the agreement in assigning employees to perform Second Cook's duties and only paying Third Cook's rate therefor.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1939.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 873
DOCKET No. DC-845**

NAME OF ORGANIZATION: Dining Car Cooks and Waiters Industrial Association

NAME OF CARRIER: Missouri-Kansas-Texas Lines

Upon application of the representatives of the employees involved in the above award, that this Division interpret same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The claim reads:

"Claim of the System Committee of the Dining Car Cooks and Waiters Industrial Association that Cooks James Baity, David Greenlee, Robert Johnson and J. Shelton performing service in the Kansas City pool are second cooks, and as such are entitled to that rate of pay retroactive to December 17th, 1937."

The claim specifically names the four persons for whom the award was made, and the Board cannot extend the claim through an interpretation to include persons not covered therein.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of October, 1939.