Award No. 977

Docket No. DC-1032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL OF DINING CAR EMPLOYES (LOCAL 351)

THE NEW YORK CENTRAL RAILROAD (LINES WEST)

BIG FOUR RAILWAY, AND

MICHIGAN CENTRAL RAILROAD

STATEMENT OF CLAIM: "Claim for the difference between the hourly rate for waiters and pantrymen and the hourly rate for upstairs waiters for John Moore, Edward Clements, Weldon Turner, William Carr and others similarly situated for services performed in higher rated positions as upstairs waiters along with regular duty performed as waiters and pantrymen, retroactive to January 11, 1939, date of opening of claim by employes."

EMPLOYES' STATEMENT OF FACTS: "The carrier hiring claimants as waiters or pantrymen has required that, along with other regular duties, they perform, or make themselves available to perform, the duties attendent to the position of upstairs waiters or jitney waiters. The rates of pay for waiters and upstairs waiters, or jitney waiters, per the contract signed December 20, 1937 are as follows:

		per month	per hour
Waiters	—Century and Mercury Runs	$79.60	.3317
	Other Runs	74.60	.3108
Pantrymen	—Century and Mercury Runs	82.00	.3417
	Other Runs	77.00	.3208
Upstairs Waiters—		97.00	.4042

No additional compensation is allowed—that is the rate for upstairs waiters does not apply, according to the company, when pantrymen or waiters are required to perform or be available to perform the duties required in the position of upstairs waiters. In other words, the men work under the following conditions: Either the pantryman or waiter on each trip is assigned to the work of upstairs waiter, being required to perform or be available to perform, any service ordinarily performed by an upstairs waiter, but no additional compensation is allowed."

POSITION OF EMPLOYES: "That the waiter and pantrymen are being forced and assigned to perform, in addition to the regular duties attached to these positions, the duties of upstairs waiter with no additional compensation, is verified by a letter from the Management dated February 11, 1939:

'Chicago, Illinois
February 11, 1939

Mr. McGill Simms,
System Chairman,
Dining Car Employes' Union, Local No. 351,
4306 So. Michigan Avenue,
Chicago, Illinois.

ment. In this connection reference is here made to our letter of July 6, 1939, to Mr. Simms which completely states our position.

"The claim is presented on behalf of four named waiters and 'others similarly situated,' the latter being a most indefinite expression. We have never discussed claims of any individuals with the committee. Furthermore, we have no employe named Edward Clemence, but there is a waiter named Edward Clements who may be the individual involved.

"The individuals named were not **assigned upstairs waiters;** therefore they are not entitled to 'the difference between the hourly rate for waiters and pantrymen and the hourly rate for upstairs waiters.' These individuals may at times have performed casual out-of-car service when so ordered by the Steward or Waiter-in-charge, this being in accord with the practice in effect for at least twenty years. They had their regular stations in the dining car, and the out-of-car service actually increased rather than decreased their gratuities.

"For the foregoing reasons the management can see this claim in no other light than an attempt to amplify the provisions of the current agreement. It was for these reasons that the management declined to enter into a joint submission. The carrier has the conviction that the aim of the Brotherhood is unquestionably a desire to revise the agreement itself. When such changes are desired, the procedure provided for in the last paragraph of the agreement must be followed."

OPINION OF BOARD: The claim is indefinite and the statements and contentions of the parties are so conflicting that the Division finds it impossible to reconcile them for the purpose of making an award.

The parties are in agreement on two matters: First, that when a waiter is exclusively assigned as "upstairs waiter" he is paid the "upstairs waiter" rate of pay. Second, that when a waiter assigned to a car as waiter or pantryman performs occasional upstairs work along with his assigned work in the car, he is only paid the rate applicable to the position to which he is assigned in the car. The record is silent as to the time the individual claimants were used on upstairs work.

In view of the conflicting statements contained in the record, case should be remanded to the parties for their further consideration. In the event no settlement is reached, specific cases on the question in dispute may be submitted.

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 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 jurisdiction over the dispute involved herein; and

That the case shall be remanded to the parties for further handling on the property.

AWARD

Case is remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. *Johnson*
Secretary

Dated at Chicago, Illinois, this 26th day of October, 1939.