

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim to have dining car steward compensated for time lost on dining car No. 6908 beginning November 3, 1938, and subsequent dates; also to have dining car steward compensated for time lost on dining car No. 6912 beginning December 14, 1938, and subsequent dates; and that dining car chefs and cooks working on dining cars Nos. 6908 and 6912 during period mentioned, be compensated on basis of rates applicable to regular dining car service instead of rates applicable to cafe cars; based on provisions of Rule 1, Dining Car Stewards', Chefs and Cooks' Agreement of March 1, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Prior to November 3, 1938, standard dining car No. 6908 was operated in passenger trains Nos. 418-419 between Mankato, Minnesota and Wyeville, Wisconsin, the crew consist of this car included steward, chef, 2nd and 3rd cooks, and were compensated on basis of Rule 1, current agreement applicable to dining car stewards, chefs and cooks, as follows:

RATES OF PAY.		REGULAR DINING CARS
Rule 1.		
Stewards	1st year	\$140.00
	1 and less than 2 years	150.00
	2 and less than 5 years	155.00
	5 and less than 10 years	160.00
	10 and less than 15 years	165.00
	15 years and over	170.00
Chef-Cooks	1st year	125.00
	1 and less than 2 years	135.00
	2 and less than 5 years	140.00
	5 and less than 10 years	145.00
	10 and less than 15 years	150.00
	15 years and over	155.00
Second Cooks	1st and 2nd years	100.00
	2 and less than 5 years	110.00
	5 and less than 15 years	115.00
	15 years and over	120.00
Third Cooks	1st and 2nd years	75.00
	2 and less than 5 years	85.00
	5 and less than 15 years	90.00
	15 years and over	95.00'

December 15 to 25, 1938, incl., between Sioux City and Omaha, were compensated at rates applicable to cooks assigned to cafe combination cars as established by agreement between the railway company and the organization representing that class.

"There is no provision in the agreement requiring the assignment of steward to a cafe combination car; neither has it been the established practice for a period in excess of 25 years to assign a steward to such type of car. The fact that cars 6908 and 6912 were previously classified as regular dining cars does not sustain contention of the employees that the manning of the car when converted into a cafe lounge car must be on basis of personnel assigned to a regular dining car. The question of personnel to be assigned to a car must be determined on basis of the class of the car when in service, and as the two cars referred to were, beyond question of successful contradiction, cafe lounge cars while assigned to trains 419-418 and 203-204, the manning of such cars by a crew of a class assigned to cafe combination cars and compensating such employees at the agreed to rates established for such class was proper.

"It is the position of the railway company that the personnel of crew assigned to combination cafe lounge cars 6908 and 6912 while employed in service on trains 419-418 and 203-204, and rates of pay allowed were in accordance with provisions of established practice in effect for a period in excess of 25 years, and was not in violation of the railway company's agreement with organization representing such class."

There is in existence an agreement between the parties bearing effective date of March 1, 1938.

OPINION OF BOARD: There can be no question, under Rule 1 of the Agreement effective March 1, 1938, that no obligation is imposed upon the carrier to use stewards on cafe cars, and that chefs and cooks used on cafe cars are not entitled to any higher rates of pay than those expressly provided for such service. The sole question at issue in this proceeding, therefore, is one of fact: whether dining cars No. 6908 and No. 6912, as used on the runs here involved, were "regular dining cars" or "cafe (combination) cars," within the meaning of Rule 1 of the Agreement. The mere fact that these cars had been intended, and at some previous time classified, as "regular dining cars" is not conclusive, since the carrier is free to convert regular dining cars into cafe cars; nor is the fact that some alteration has been made by the carrier in the normal use of regular dining cars conclusive of their conversion into cafe cars, since such alleged conversion might merely be resorted to as a subterfuge to effect changes in personnel and reductions in rates of pay. Whether or not there was an actual and bona fide conversion in this case depends, partly upon the types of cars previously used on these runs, and partly upon the physical characteristics of cafe cars in relation to those of regular dining cars. On the first of these matters the evidence is confused and conflicting; on the second of these matters the record is entirely barren of evidence. Under these circumstances the Board is not in position to reach an authoritative determination, and hence the case will be remanded to the parties for disposition in conformity with the views set forth in this Opinion, or for resubmission on a record adequate for adjudication of the dispute.

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 evidence of record is inadequate for adjudication of the dispute.

AWARD

The case is remanded to the parties for disposition in conformity with the views set forth in Opinion of Board, or for resubmission on a record adequate for adjudication of the dispute.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.