Award No. 2188
Docket No. DC-2136

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim for and in behalf of waiters employed by the Chicago & North Western Railroad Company because the carrier deprives employes of this class, work properly within the scope of the agreement between the parties on trains No. 111 and No. 112 (City of Denver) when they assign such work to porters.

Further, that unassigned and extra waiters of the carrier be compensated for what they should have earned had they been allowed to perform the work referred to.

EMPLOYES' STATEMENT OF FACTS: Your petitioner, the Joint Council Dining Car Employes, Local 351, respectfully submits that it is authorized to represent all Waiters-in-Charge and Waiters in the dining car service of the Chicago & North Western Railway Co. Your petitioner further sets forth that in such capacity under date of April 10, 1941, did enter into an agreement with the Chicago & North Western Railway Co., covering (1) hours of service; (2) working conditions; and (3) rates of pay, of Waiters-in-Charge and Waiters in the service of the carrier. Note Exhibits A and B.

Your petitioner further sets forth that on or about September 1, 1941, the Chicago & North Western Railway Co., took over the operation of the employes on the coaches on trains No. 111 and No. 112 which operates over the Chicago & North Western Railway as far as Omaha, Nebraska and over the Union Pacific to Denver, Colorado. The duties of the carrier's service on these coaches were assigned to employes from the Porters' and the Waiters' roster, 50% from each. Their duties were those usually assigned to coach porters such as handling of baggage, keeping car and toilets clean, discharging passengers, etc., and those duties usually assigned to waiters such as serving meals, beverages, candies, etc.

The Dining Car Employes Organization representing Dining Car Workers on the property of the Carrier, contended that because these employes served food which was prepared in and served out of trains No. 111 and No. 112, all such assignments should be made from the Waiters' roster, which was declined by the Carrier, Note Exhibit C.

However, the matter was not followed up until after the Brotherhood of Sleeping Car Porters filed a claim before the National Railroad Adjustment Board in regard to the work herctofore referred to, claiming that all the porter's work should be assigned to employes from the porters' roster. The Claim read as follows:

To boil the situation down to a simple analysis, the employes have an agreement with the respondent carrier covering waiters-in-charge and waiters. The carrier has said in its ex parte submission to the Brotherhood of Sleeping Car Porters that:

> "it developed that the work required of the coach porter-waiter was substantially 50% work ordinarily performed by coach porter and 50% work ordinarily performed by a waiter. . . ."

The Board has said that such work that is usually performed by porters should be assigned to employes on the porter's roster and this has been done. However, the 50% of the work that is usually waiter's work by the carrier's own admission, has also been assigned to porters who made no claim for it.

We, therefore contend, that, it is not only reasonable that the waiter's work be returned to the employes from the waiter's roster, but that such employes as mentioned in the claim should be compensated to the extent suffered in not being allowed to perform such services.

We believe that all the facts are properly before this body and request that the Board find for the employes.

POSITION OF CARRIER: The sole question here in dispute is that involving work which may properly be required of a coach porter and in no manner involves any agreement between the railway company and the Joint Council Dining Car Employes, and, accordingly, it is the position of the railway company the Board has no jurisdiction to accept and handle such dispute.

OPINION OF BOARD: This case involves assigning work claimed by the petitioner to be within the scope of the agreement to employes of another organization.

The carrier makes two principal contentions: First, that the work in question is not work of "waiters in dining car service", and second, that to hold otherwise would be to limit the duties of coach porters involved in this particular case, which would be outside of the jurisdiction of this Division of this Board and contrary to Award No. 118 made by Division Four of this Board in Docket No. 160.

In resisting the claim of the coach porters in Docket No. 160 the carrier said that 50% of the work of the positions in question was work ordinarily performed by a waiter, came within the scope of the agreement with the waiters, and that prior to Award No. 118 half of the positions had been filled from the class holding seniority as waiters; that the person holding such position solicited meal orders from coach passengers for two meals enroute, had such orders filled from the dining car, and served them on trays to the passengers. Thus the carrier has interpreted the agreement and found that the work here in question is within the scope of the agreement. We accept the carrier's interpretation.

Nor are we by so holding going beyond our jurisdiction and limiting the duties of coach porters contrary to Award No. 118. The petitioner in that case carefully limited its demand to chair car work of coach porters and defined "chair car work" as "cleaning the cars, sweeping, dusting, mopping, cleaning cuspidors, cleaning of smoking rooms and the like, receiving and discharging passengers, handling the baggage of the passengers and generally looking after their comfort while on the train." The findings there were only that the porters were entitled to perform the porter service.

Award No. 118, instead of being in conflict with the contention of the petitioner, therefore, serves as a precedent for our holding in this case that the waiters are entitled to perform the waiter service on the trains in question.

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 employe involved in this dispute are respectively carrier and employe 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 is violating the agreement by assigning work within the scope of the agreement to employes not covered by said agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1943.