Award No. 2325
Docket No. DC-2194

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL NO. 351

ILLINOIS CENTRAL SYSTEM

STATEMENT OF CLAIM: Claim of the Joint Council of Dining Car Employes, Local No. 351, Hotel and Restaurant Employes' International Alliance and Bartenders' International League of America, for and in behalf of Club Car Porters, B. F. Cowan, and others similarly situated for compensation in the total amount suffered retroactive to May 3, 1942, as a result of the removal of Club Car work on the Panama Limited and forming or contracting such work to the Pullman Company and permitting persons not holding rights on the Club Car Porters' roster to be assigned thereto.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement dated effective November 16, 1937 as to rates of pay and effective December 1, 1937 as to rules, the Scope Rules of which provides:

> "Schedule of Rates, Rules and Working Conditions for Chefs, Cafe Car Chefs, Cooks, Waiters-in-Charge, Buffet and Club Car Porters, Pantrymen, Assistant Pantrymen, Waiters and Bus Boys, employed on Dining, Cafe, Buffet and Club Cars by the Illinois Central Railroad Company. The Yazoo and Mississippi Valley Railroad Co. and Gulf and Ship Island Railroad Company."

On the effective date of this Agreement and for many years prior thereto the Club Cars on the Panama Limited were manned by Club Car Porters, in the employ of the Dining Car Department of the Carrier.

On May 3rd 1942, the Carrier placed new equipment into service on the Panama Limited. The Club Cars on the new equipment were manned by employes of the Pullman Company. These Cars differed from the old Club Cars only in one respect, that is at one end sleeping accommodations were installed. The other end of the Car was set up as a Club or Lounge Car. No claim is presented by your petitioner for any work performed by Pullman Porters in the Sleeping Car portion but we do assert that the Club Car work is covered by the Scope of our Agreement and should be assigned to the employes entitled thereto.

POSITION OF EMPLOYES: For more than twenty years, Club Car Porters assigned and operating out of the Dining Car Department have performed this class of service for the Carrier, and have performed this class of work on the Panama Limited for as long as your Petitioner can remember.

designated limiting and restrictive language in the Title and Article 33 would have been omitted or terminology added to permit such coverage. As this particular type of car is not covered by the agreement, a new rule would have to be inserted in the agreement to make it applicable. Your Board cannot supply a rule where none exists (See Third Division Awards 42, 219, 237, 238, 239, 240. 383, 389, 794, 871, 947, 1100, 1102, 1116, 1149, 1248, 1290, 1489, 1609, 1687, 1789 and others).

The Carrier cites Third Division Award 405, Dining Car Waiters vs. Union Pacific, in support of its position. In that case the carrier inaugurated service on the streamliners, City of Denver, City of San Francisco and City of Los Angeles. On these trains the carrier used employes designated as waiter-porter-in-charge, waiter-porter, stationary pantryman, and valet, which positions were not within the scope of the agreement, and which required additional services not contemplated by the agreement. In denying this claim the Board commented in part as follows: "The evidence indicates these new positions are the result of requirements on the streamline trains. It is understood that new equipment brings new responsibilities, new duties and a different and distinct class of service requiring new classifications. . . ."

The Carrier is filing as Exhibit "1" one copy of advertising issued to cover the new PANAMA LIMITED. This literature illustrates the great change which has taken place in this train and also shows the type of service rendered in the new sleeper-lounge car.

The Carrier submits that its dining car employes have no right to infringe upon work which belongs to the Brotherhood of Sleeping Car Porters' organization and requests that this claim be dismissed for lack of jurisdiction, or, if Board elects to take jurisdiction, that it be denied without qualification.

OPINION OF BOARD: On May 3, 1942, the Carrier under its contract with the Pullman Company placed in service as part of its new Panama Limited train a combination sleeper-lounge car belonging to the Pullman Company and serviced by the employes of the Pullman Company. The Employes contend that the lounge portion of said car is the same as a club car and the service in that portion of the car belongs to the Club car porters under the Agreement between the Employes and the Carrier.

The caption of that agreement which is treated and considered the Scope Rule thereof says:

Schedule of Rates, Rules and Working Conditions for Chefs, Cafe Car Chefs, Cooks, Waiters-in-Charge, Buffet and **Club Car** Porters, Pantrymen, Assistant Pantrymen, Waiters and Bus Boys **Employed on** Dining, Cafe, Buffet and **Club Cars** by Illinois Central Railroad Company * * *." (Our emphasis.)

The Carrier contends that since the combination car belonged to the Pullman Company and was operated by its employes, the work in question is not under the agreement.

The Employes in the oral hearing conceded that the Agreement when made did not cover the work then being done by employes of the Pullman Company on cars which were the property of that Company.

To sustain their position on this claim the Employes cite Award No. 2188 in which this Division recently held that a carrier could not assign work covered by an agreement to persons not covered by the agreement. There, however, it was conceded that the work in question was covered by the agreement.

The Employes in support of their claim also cite Award 867 of this Division which held that the carrier there could not assign work covered by the Dining Car Employes' Agreement to employes not covered by placing in service a new type of dining car and calling it a "Grill" or "Cafeteria" car. There the new car was owned by the Carrier and operated by its employes.

The Employes cite Awards numbered 180, 323 and 871 to show that the carrier cannot "farm" or "contract" out work which they have covered by an agreement with a group of their employes. The facts of those cases, however, are distinguishable from the instant case.

Here the Carrier and the Employes when they negotiated this agreement both knew and must be considered to have had in mind the relation between the Carrier and the Pullman Company. Both must be considered to have had in mind the fact that the Pullman Company employes furnished the service in their cars which they operated. There was apparently no desire nor intention on the part of the Dining Car Employes to cover work on Pullman cars where the Pullman employes were furnishing the service.

With these facts in mind, we are of the opinion that under the circumstances of this case the work of this combination car, belonging to the Pullman Company and being done by Pullman employes could not be said to be covered by this Agreement which named **Club Car Porters employed on Club Cars by Illinois Central Railroad Company.**

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 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 we find no violation of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1943.