

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE TEXAS & PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of unassigned dining car stewards for time earned by dining car crew or crews with waiter or waiters in charge when displaced effective March 13, 1948, Train 8 and 7 between Fort Worth and Texarkana until dining car stewards are restored to such runs, and similar and/or identical claims of dining car stewards on other runs where waiters in charge have displaced the dining car stewards. (Carrier's file T-23039.)

EMPLOYEES' STATEMENT OF FACTS: On March 11, 1948 Bulletin 807 was issued by Superintendent of Dining Car Service Findley, such bulletin reading as follows:

"Effective March 13, 1948, Diner-Lounge will operate on Trains 8 and 7, Fort Worth to Texarkana and return with the following crew:

1—1st Cook, 1—2nd Cook, 1 Waiter in Charge, and 1 Pantryman.
Bids will be received in this office until 12:00 Noon, March 17,

1948 for the following:

2—1st (Chef) Cooks
2—2nd Cooks
2 Waiters in charge
2 Pantrymen"

Prior to March 13, 1948 dining car service in charge of dining car stewards was operated on Trains 8 and 7, Fort Worth to Texarkana and return. On the effective date of the bulletin, March 13, 1948, the services of dining car steward was discontinued and the dining cars assigned on these runs were changed to so-called diner-lounge cars by the rearrangement of the interior of the car or cars and these cars now have a seating capacity of eighteen (18) passengers and that number can be waited on at one time and as the passengers retire after having been served additional passengers take their place and receive the service desired, but the crew in charge of a waiter continued to give the patrons the same service as had been given heretofore; in other words, meals are served to the public on these so-called diner-lounge cars the same as they had been prior to the effective date of Bulletin 807, hereinabove quoted.

POSITION OF EMPLOYEES: Claim based on Rule 7, Paragraphs (a), (c) and (e), and Rule 12 of the Agreement governing dining car stewards, reading:

Seventh: The organization should not be heard to request from the National Railroad Adjustment Board an award which would have the effect of granting the craft a new rule not theretofore a part of the labor agreement.

Eighth: Diner-lounges on the Texas and Pacific have always been manned by waiters-in-charge—never by stewards.

Ninth: The work of supervising diner-lounges and similar combination equipment properly belongs to waiters-in-charge, and is covered by a labor agreement with the Dining Car Employees' Union.

Tenth: To replace waiters-in-charge with stewards on diner-lounges would be a violation of pre-existing contractual rights of waiters-in-charge under the agreement with the Dining Car Employees' Union.

Eleventh: The claim is so vague and indefinite as to be invalid and unenforceable, and therefore should not be entertained by the Board.

Wherefore, the carrier earnestly requests that the claim of the organization and employees herein be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to March 13, 1948 dining car service in charge of stewards was operated on Trains 7 and 8, Fort Worth to Texarkana and return. By bulletin March 13, 1948 Carrier advised that effective March 13, 1948 diner-lounge would operate on Trains 7 and 8, Fort Worth to Texarkana and return with following crew: 1st Cook, 2nd Cook, 1 Waiter-in-charge and 1 Pantryman. Employees claim that the work performed by waiter-in-charge is work properly devolving upon dining car stewards and that similar or identical work is being performed by dining car stewards assigned to other trains and that the assignment of this work to waiters-in-charge is in violation of their schedule.

It appears that the first Agreement between Carrier and the Brotherhood of Railroad Trainmen representing Dining Car Stewards and/or Conductors was entered into effective May 16, 1936. It further appears that the parties entered into a Memorandum Agreement which is tantamount to a joint interpretation of the May 16, 1936 Agreement in which it was stated:

"It is understood that the Railway Company assumes no obligation in connection with that agreement to use dining car stewards and/or conductors on runs where their services are not required."

Carrier asserts that due to steadily decreasing business it discontinued using a standard dining car on Trains 7 and 8 and substituted the diner-lounge above-mentioned.

Although the record herein is extremely lengthy and replete with contentions and counter-contention, we believe that the issue before the Board in this docket is whether or not under the circumstances here present the Carrier acted within the scope of reasonable managerial discretion in dispensing with the service of stewards on the runs involved in this dispute. The issue herein, is similar to that presented to the Board in Award 702 involving the same parties wherein it was stated:

"Regardless of what considerations may have led to this joint interpretation, it is clear that it was intended to give the carrier some managerial discretion in deciding to use stewards or not to use them in terms of the service requirements at a given moment. It is equally clear, however, that this agreement does not give the carrier an arbitrary privilege to dispense with a steward regardless of the service requirements. If the carrier enjoyed this privilege, the agreement would be illusory."

Carrier asserts and Employees do not deny that there was a steadily declining dining car business on Trains 7 and 8. Carrier produces figures to show that the average receipts on the diner-lounge was one-half of those

on standard diners on Trains 1 and 2 also operating between Texarkana and Fort Worth. These figures cover a period from April 4, 1948 to May 14, 1948. It is also clear from the record that the diner-lounge seats about half as many patrons and is manned by a crew half as large as the standard diner. The type of service is also different. We believe the Carrier has shown a reasonable exercise of managerial discretion in assessing service requirements and justification for dispensing with the service of a steward on the trains involved in the instant dispute. It follows that a denial award is in order.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.