Award No. 4736

Docket No. DC-4492

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 478, on the property of the Louisville and Nashville Railroad Company, for and in behalf of Chefs Roscoe Glover, Lonnie Burkett and all other employes similarly situated and affected thereby; that they be paid the difference between Eighty-four and one-half (84½c) cents per hour that they are receiving and the established rate of Ninety-six (96c) cents per hour they have earned, for all time worked on the Memphis-Guthrie run from May 27, 1947, until properly changed in accordance with the existing agreement.

EMPLOYES' STATEMENT OF FACTS: On May 27, 1947, the Carrier arbitrarily, without justification and solely for the purpose of avoiding the payment of the established rate, notified Messrs. Roscoe Glover and Lonnie Burkett, Chefs, that "Effective today the chefs' rate of pay on the Memphis-Guthrie run, Trains 198-199, will be eighty-four and one-half (84½c) cents per hour."

A letter of the same date was addressed to Mr. Roscoe Glover, Chef, which reads:

> "As we are operating Diner 2700 with a waiter-in-charge, you understand, of course, that there will be a reduction in the chefs' rate of pay.
>
> As this change is effective today, this will give you an opportunity to bid off the run if you so desire. If you do not want the work on the Memphis-Guthrie Line, then give me five or six choices of reassignments by return mail."

POSITION OF EMPLOYES: When this action was protested the Carrier made a strong but an unconvincing attempt to justify it by claiming to have acted in accordance with Rule 10(b), which reads:

> "When new runs are established, or changes made in present runs, compensation will be fixed in conformity with that of existing comparable runs."

If it were possible to involve this rule, neither the Carrier's action nor its contention, (see letter of November 6, 1947), could be sustained because Rule 10(b) is clear and definite, it covers "runs":—(1) "new runs" (2) "changes in present runs" and (3) "existing comparable runs." This rule must be interpreted in its own unmistakable language and the Carrier found in error for the following reasons:

sonville Line. In as much as it is in line with the agreement with the Waiters and Cooks under Rule 10, Paragraph (b). I concur with your application of same.

Yours truly,

/s/ Milton Robertson
General Chairman D.C.C.&W."

This run was changed back to steward and full crew on May 8, 1942, and is still on that basis.

3. On December 10, 1938, Pensacola-Chipley run, Trains 4-1, was changed from steward to waiter-in-charge along with the other changes incidental. We do not find that any particular handling took place with the General Chairman in connection with adjusting the chef's rate in conformity with that of the waiter-in-charge. This run was changed back to steward and full crew on December 1, 1941, and again reverted to the waiter-in-charge arrangement on May 17, 1948. It thus remains, and we have had no claim throughout.

4. The Louisville-Cincinnati run on Trains 8-101 was changed January 1, 1939, from steward and full crew to the waiter-in-charge arrangement. Adjustment to conform the chef's rate was never questioned. This run reverted to steward and full crew on May 30, 1942.

All the foregoing amply shows, by rule, by agreed principle, and by precedents concurred in, that in the present case the handling given by the Carrier did not violate the agreement. It was only the latest of a whole series of like cases, all handled the same, with the Employes' knowledge and acquiescence and in some cases their specific sanction unmistakably expressed. The claim has no proper grounds. Declining it is the only action.

(Exhibits not reproduced).

OPINION OF BOARD: Formerly Carrier operated a diner between Memphis and Guthrie, with steward, full crew, and standard service. On May 27, 1947, due to decreasing patronage, part of the seats and tables were removed from the diner, the crew was reduced, the menu limited, the steward discontinued and a waiter-in-charge put on. In connection with that change, Carrier advised the Chef:

> "As we are operating Diner 2700 with a waiter-in-charge, you understand, of course, that there will be a reduction in the chef's rate of pay.
>
> "As this change is effective today, this will give you an opportunity to bid off the run if you so desire. If you do not want the work on the Memphis-Guthrie Line, then give me five or six choices of reassignments by return mail."

Justification for this decrease is based on Rule 10 (b) which reads:

> "When new runs are established, or changes made in present runs, compensation will be fixed in conformity with that of existing comparable runs."

Claimant insists that the mere change in service and control of the diner did not constitute a new run or a change in run, and further quotes Rule 7 (d) to the effect that permanent vacancies will be promptly bulletined for a period of ten days and the senior employe making application will be assigned.

In answer, Carrier relies upon what it calls "The agreed principle that the pay rate for a chef should not be above that for the waiter-in-charge on the dining car on which both work," which it says was understood and concurred in all around when the first working Agreement was made in 1937, and has since been confirmed. In support of that, it refers to a similar change on another run to limited service and waiter-in-charge, where a reduction of the chef's rate was approved by the Organization. On being advised of

such change, on May 2, 1938, the General Chairman gave his approval, as follows:

> "In as much as it is in line with the conclusion reached when the agreement was negotiated concerning the salary of a Waiter-in-Charge being equal or higher than that of a chef on cars operated by a Waiter-in-Charge.
>
> "I am in concurrence with your opinion that the Chef's rate of pay on the Diner of Trains No. 92 and 93 be changed to rate of pay as that of the Chef on the Bowling Green-Memphis Division."

And again, where similar action was taken on a second run, the General Chairman wrote:

> "In acknowledgement of your letter of May 13, 1938 concerning the reduction of wages of the Chef Cook on the Pensacola-Jacksonville Line. In as much as it is in line with the agreement with the Waiters and Cooks under Rule 10, Paragraph (b). I concur with your application of same."

Nowhere in its submi ion does the Organization challenge these approvals of reduction of rate or s st any difference in situation between the rates there involved and the o. w before us. In the absence of other showing, we might be inclined to a that the term "new runs" or "changes made in present runs" might be c strued as applying only to changes in termini or hours of service. Howeve , the two acknowledgements by the General Chairman of the understanding that the waiter-in-charge should have salary equal to or higher than that of the chef appear to be sufficient to establish that the phrase "changes made in present runs" was meant to include changes in limitation of service, where a waiter-in-charge was substituted for a steward, as well as changes in mileage or hours of service. Such being the case, under Rule 10 (b) the reduction of compensation of the chef was proper.

It is further urged by claimant that the Memphis-Bowling Green run, supposedly used as a comparable run and basis for the decreased salary of the chef, was not an existing run on May 27, 1947, in that it had been abolished at a previous date. If such was the case, and there was no other existing comparable run upon which salary might be based, it should be made equal to that of the waiter-in-charge.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

That the Carrier and the 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 reduction of rate of claimant employes was not a violation of 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 28th day of February, 1950.