

Award No. 5309

Docket No. DC-5202

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of H. G. Mertz, Cafe Coach Cook, for difference in earnings on November 7, 1949 and all subsequent dates and claim of R. C. Kroenke, Cafe Coach Cook, for difference in earnings on November 10, 1949, and all subsequent dates based on Rules 1, 2, 16 and 22 of the Chefs' and Cooks' Agreement effective March 1, 1948.

EMPLOYES' STATEMENT OF FACTS: Prior to November 6, 1949, Cafe Coach Cooks D. J. Welligrant, Carl Schroers, H. F. Braun and Eric Erickson were assigned to prepare and cook food on cafe coaches operating between St. Paul and Winnipeg on Trains Nos. 1-13 and between Winnipeg and St. Paul on Trains 14-2 in accordance with agreement in effect between the Northern Pacific Railway and the Dining Car Chefs, Cafe Coach Cooks, Dining Car Second, Third and Fourth Cooks represented by the Order of Railway Conductors.

On these St. Paul-Winnipeg trains, there were also four Waiters employed on the cafe coaches. In other words, one cafe coach cook and one waiter were employed on each cafe coach.

Effective November 6, 1949, the Carrier cancelled the assignment of the four cafe coach cooks and assigned the preparing of food and other kitchen work to the four Waiters employed on these cafe coaches.

Because their positions were abolished and the work of preparing and cooking food on the cafe coaches was turned over to the Waiters, it was necessary for the four Cafe Coach Cooks on the St. Paul-Winnipeg runs to exercise their seniority to other runs displacing four cooks junior to themselves.

Two of the Cafe Coach Cooks formerly assigned to the St. Paul-Winnipeg trains displaced Cafe Coach Cooks H. G. Mertz and R. C. Kroenke who were regularly assigned as Cooks on cafe coaches operating between St. Paul and Spokane on Trains Nos. 3 and 4 and it was then necessary for Messrs. Mertz and Kroenke to exercise their seniority to positions as second cooks at a lower rate of pay which also resulted in longer periods away from the home terminal.

Therefore, Messrs. Mertz and Kroenke made claim for difference in earnings between what they would have earned had they continued as Cafe Coach Cooks on trains 3 and 4 between St. Paul and Spokane and what they earned as Second Cooks on 50-51 and 1-2 between Chicago and Seattle, effective November 7 and 10 (respectively) 1949 and all subsequent dates.

operated between St. Paul and Winnipeg in lieu of the waiter in charge, Dining Car Employees' Union, Local 516, has a right to be heard before any award is rendered that would operate to replace the waiter in charge with a cafe coach cook. See Award 2596 of this Division and awards therein cited.

Notwithstanding the absence of any rule of the Chefs' and Cooks' Agreement that sustains this claim, the claim covered by this docket nevertheless cannot be sustained as Cafe Coach Cooks Mertz and Kroenke were not displaced by occupants of positions of cafe coach cooks assigned to Trains Nos. 1-13 and 14-2. Consequently, in any view of this case, the claim of the Employees is untenable.

The Carrier has shown that the positions of cafe coach cook assigned to Trains Nos. 1-13 and 14-2 prior to November 6, 1949, were properly abolished and that likewise the occupants of these positions exercised seniority in conformity with the rules of the current Chefs' and Cooks' Agreement when affected by the abolishment of their positions. The Carrier has also shown that Cafe Coach Cooks Mertz and Kroenke were not displaced by cafe coach cooks assigned to the cafe coach operated between St. Paul and Winnipeg prior to November 6, 1949. The claim covered by this docket should therefore be denied.

(Exhibits not reproduced.)

..

OPINION OF BOARD: It is apparent, in view of our Opinion and Findings in Award 5308, that the claim asserted in this docket is not sustainable.

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 Employee 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 9th day of April, 1951.