

Award No. 5310

Docket No. DC-5203

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 W. E. McIntire, Second Cook, for difference in earnings on November 13, 1949, and all subsequent dates and for time lost December 1 to 5, inclusive, 1949, and subsequent dates; and, similar claims from R. C. Markus and J. J. Kilstrom and all other chefs and cooks whose seniority was affected or who were eliminated from service altogether on account of four Cafe Coach Cooks' positions on the St. Paul-Winnipeg, trains being abolished, based on Rules 1, 2, 16 and 22 of the Chefs' and Cooks' Agreement effective March 1, 1948.

EMPLOYEES' 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 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.

In 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 canceled the assignment of the four Cafe Coach Cooks and assigned the preparing of food and other kitchen work to the four waiters 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.

As a result of such exercise of seniority, W. E. McIntire who was regularly assigned as second cook on Trains Nos. 50-51-1-2 (North Coast Limited) was displaced on November 12, 1949 and had to exercise his seniority to position of Third Cook at a lower rate of pay and on December 1, 1949, he was again displaced and lost a round trip December 1 to 5, inclusive, and finally was eliminated altogether from service as cook on the Northern Pacific Railway.

Messrs. R. C. Markus and J. J. Kilstrom who were regularly assigned as third cooks on the North Coast Limited were also displaced as a result of the

if the contract is to have validity. In the absence of a specification of the classes of work reserved by a collective agreement, we are of the opinion that it reserves all work usually and traditionally performed by this class of employees who are parties to it. Clearly this was the intent of the parties, otherwise a specification of included and excluded work would have been required in the scope rule of the agreement."

The foregoing pronouncement by this Division is particularly applicable to the claim covered by this docket. Traditionally and historically all work in connection with preparing and serving food on a car upon which only one Dining Car Department employee is assigned is performed by a waiter in charge. This is precisely what occurred on the cafe coach operated between Manitoba Junction and Winnipeg on and after November 6, 1949.

What the Employees are herein seeking is a new rule through the medium of an award of this Division. The effect of an award sustaining this claim would give to the Employees the right to perform all service of preparing foods in dining car service. The Carrier in the claim of Cafe Coach Cooks Welligrant, Schroers, Braun and Erickson has shown that the Employees attempted to secure such a rule in the negotiation of the rules resulting in the current agreement but were not successful in doing so.

This Division in a series of awards involving Dining Car employees has consistently refrained from rendering awards that would have the effect of allocating certain work to specific classes of Dining Car employees in the absence of rules granting to such classes of employees the types of work occasioned. See Awards Nos. 493, 782, 3523, 3802, 4019, 4240 and 4502 of this Division.

Moreover, employees included within the scope of the agreement with Dining Car Employees Union, Local 516, have a vital interest in the outcome of this dispute. Should this Division render an award that would have the effect of requiring the assignment of a cafe coach cook on the cafe coach 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 Cooks McIntire, Markus and Kilstrom 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 cooks 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 Cooks McIntire, Markus and Kilstrom 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 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 9th day of April, 1951.