

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: This claim is filed in behalf of Waiters-in-Charge C. L. Jarrett, W. McLemore, C. T. Mayberry and C. W. King assigned to Trains 17-18 between Chicago, Illinois and Oakland, California. The above named employes of the carrier, by the issuance of Notice No. 8, have been required since January 27, 1950 to perform certain duties of Coach Cafe Cooks, i. e., preparing sandwiches, making coffee and washing dishes.

Prior to January 27, 1950 the additional duties now being performed by Waiters-in-Charge were being performed by Coach Cafe Cooks. Carrier's action in assigning these duties to Waiters-in-Charge is in direct violation of Rules 1 and 2 and 28 of the current rules agreement, is contrary to Carrier's General Rules and Standards Service Manual for the Guidance of Dining Car Employes, pages 26-27, and is violative of Section 2 Seventh of the Railway Labor Act.

For the above reasons claim is filed for the Waiters-in-Charge named above and all other employes similarly situated to be relieved of performing duties properly those of Coach Cafe Cooks.

Claim is also filed in behalf of J. A. Covington, E. J. Morrisette, R. B. Jackson and E. H. Hammond, formerly assigned to Trains 17-18 as Coach Cafe Cooks. The assignment of said employes on Trains 17-18 was cancelled by the terms of Notice No. 8 dated January 27, 1950.

Since Carrier's action affected Coach Cafe Cooks in much the same manner as it did Waiters-in-Charge and for the same reasons, claim is filed for reimbursement of the Coach Cafe Cooks named above for all such time as they would have made had not Notice No. 8 dated January 27, 1950, been issued.

EMPLOYES' STATEMENT OF FACTS: Since March, 1948, the Chicago, Burlington and Quincy has operated Trains Nos. 17 and 18, the California Zephyr, between Chicago and Oakland, California, the dining car equipment of which consists of a full size dining car seating 40 passengers and a Buffet-Lounge Car seating 24 passengers.

Since the inception of this Buffet-Lounge Car service, Carrier has used a Coach-Cafe Cook and a Waiter-in-Charge to man the cars. The Coach-Cafe Cook, since he was the only cook assigned to the car, had the responsibility for preparing all food, making coffee and other beverages, making sandwiches, keeping the kitchen portion of the car clean, and washing dishes. It was the responsibility of the Waiter-in-Charge to provide general supervision of the car, keep accurate accounts of the Carrier's funds, wait on the

sandwiches previously prepared, clearing tables, handling glasses, silverware and china ware, in fact, the customary duties of a waiter. The Carrier has at many times in the past operated buffet cars with only a waiter-in-charge serving prepared sandwiches, as well as coffee, in the absence of another employe. An illustration of this practice is prominently typified in Carrier's Exhibit No. 6, a copy of the buffet menus in effect in 1940 on trains Nos. 47 and 48 (The Blackhawk) operating between Chicago and Minneapolis.

Insofar as schedule rules are concerned, it will be immediately apparent that Rules 1, 2 and 28, cited by the Employees, offer nothing whatever in support of the claim made the basis of this proceeding. Rule 1, Scope of Agreement, simply designates the classes of employees in the Carrier's Dining Car Department who are subject to the terms of the collective agreement. Rule 2 merely tabulates the rates of pay for the various classes. Rule 28 sets forth the manner in which the employees in the kitchen crew of a dining car shall be rated and has no application whatsoever to the buffet cars here under discussion. None of these rules even purport to establish monopolistic rights for any class of employees, or to create any jobs of themselves not already in existence. They merely prescribe, if and when a particular job exists, how the employe shall be paid, and in the case of dining car kitchen crews, how they shall be classified.

Petitioner further asserts the Carrier's actions were contrary to the General Rules and Standard of Service Manual for the Guidance of All Dining Car Employees, pages 26-27. The only item that could possibly be referred to is a passage reading:

" . . . Chef will prepare or give personal supervision in the preparation of coffee, pastry, puddings, rolls, sandwiches and other similar items."

The irrelevancy of this passage is self-evident. It obviously refers to dining cars, since no "chefs" are employed on buffet cars. Furthermore, it most certainly cannot be considered a part of any negotiated labor contract between these parties.

In view of the facts shown, Petitioner's allegation that the abolishment of coach cafe cook assignments resulted in a violation of Section 2, Seventh of the Railway Labor Act, is entirely without merit.

In conclusion the Carrier avers:

1. As defined by past practices on this property the duties of a coach cafe cook are to prepare short orders and sandwiches for service on buffet cars.
2. Abolishment of assignments for coach cafe cooks on trains Nos. 17 and 18 from February 1 to April 29, 1950 was proper since the duties of that assignment had been entirely eliminated by the change in menu.
3. No additional duties outside the scope of the classification waiter-in-charge were performed by that employe during the period in question.
4. The rules cited by Petitioner in this claim utterly fail to support his contentions.

In view of these facts, there is no basis, contractual or otherwise, upon which to support the claim herein contained and it should therefore be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective February 1, 1950 coincident with a change of menus, positions of Coach Cafe Cooks in buffet-lounge-car on Carrier's trains Nos. 17 and 18, were abolished and positions of Waiters-in-Charge then in effect were continued. The Waiters-in-Charge were there-

after required to perform all service on these cars until April 29, 1950 when, due to another change in menus, the positions of Coach Cafe Cooks were reestablished.

The Employees present two claims for determination. First, that Waiters-in-Charge be relieved of performing duties alleged to be properly those of Coach Cafe Cooks, and second, that the Coach Cafe Cooks named be reimbursed for time lost as a result of the abolishment of their assignments.

The record shows that the Cooks' positions were reestablished on April 29, 1950; therefore, the first claim is moot.

As to the second claim, there is no definition of duties of Coach Cafe Cooks or Waiters-in-Charge contained in the Agreement between the parties. Therefore, the actions of the parties over a long period of time is the best evidence of the intentions of the parties under the Agreement.

The Carrier has asserted and the Employees do not deny that it has many times in the past, and as far back as 1940, operated buffet cars with only a Waiter-in-Charge serving prepared sandwiches, coffee, etc., as in the instant case between February 1, 1950 and April 29, 1950.

Under the facts in the instant case we find no basis for a sustaining Award.

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 27th day of April, 1951.