Award No. 7869
Docket No. DC-7593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Joint Council Dining Car Employees Local 385 on the property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for and on behalf of C. Wilson, cook; that he be paid the difference between the pay of second cook and chef cook as result of his being assigned to Diner 106 on October 16, 1954.

EMPLOYES' STATEMENT OF FACTS: C. Wilson regularly assigned by the carrier as a second cook was required by the carrier to meet an assignment on Diner 106 October 16, 1954. Said diner was to be used by the Perfex Corporation. Cook Wilson carried through the assignment as required but was paid for the trip as a second cook.

The carrier said that the only purpose for having Cook Wilson assigned to the diner in question was to look after the car and equipment while it was being used by this special group.

Rule 17 of the agreement between the parties sets forth in a specific fashion the classification of cooks when they are assigned. Each segment of this rule sets forth the classification of each cook and the last paragraph of rule 17 state, "When one employe is assigned to a kitchen from a diner, he shall be assigned as follows:

A—Chef

Therefore, for the carrier to place Claimant Wilson on an assignment where there was only one cook and pay him a second cook's rate of pay, is a clear violation of Rule 17 of the agreement between the parties.

This organization respectfully requests that claimant he paid the difference between what he received as second cook and what he should have received as chef cook.

This case has been handled to a conclusion on the property of the carrier.

POSITION OF EMPLOYES: Rule 17 of the effective agreement is herein controlling and reads as follows:

Furthermore the instructions clearly show that no "chef service" was performed by claimant or by anybody else. Certainly it cannot be argued that assisting in serving or preparing coffee is reserved exclusively for chefs. Cooks and waiters customarily prepare coffee, and chefs rarely serve.

It is impossible to construe the letter of instructions as an assignment in Dining Car Service and the only meaning to be taken from it was the one intended; that an opportunity for additional work was afforded to a second cook and three waiters to work on a car **not** in regular Dining Car Service for an outside corporation. They were even told to report to Mr. Brad Shepherd of the Perfex Corporation for their instructions.

The letter of instructions clearly set forth the nature of this additional work, the positions to be filled, namely, a second cook and three waiers, thereby fixing the rate of pay, and telling them when their time was to start.

There was no way in which carrier could require the employes to accept this additional service offered by the letter of instructions, and having accepted the offer of additional work the employe should not be allowed to claim a higher rate of pay than for which he had agreed to work.

Employes will no doubt contend under Rule 17 of the Schedule the use of Second Cook Wilson on Diner 106 automatically made him a chef. Nothing could be further from the truth, because it certainly did not change the status of the waiters to second, third or fourth cook, nor did it change claimant's status form second cook to chef. In addition, Wilson was not qualified and does not hold any rights on the property of this carrier as a chef. This alone is enough to invalidate this claim, entirely aside from the fact that no Dining Car Service whatever was performed on this occasion.

For the service which the claimant performed in this instance, which consisted of assisting with making coffee and serving ready prepared food and beverages provided by the special party and acting as custodian of the car and equipment, he was paid as second cook, the classification in which he was then normally performing service, (aside from this special trip) and **the highest classification in which he holds seniority.**

The practice of using dining car employes for this type of work has been in use on the property of the carrier for some years without objection on the part of the employes. For example, on business cars it has been necessary at times to have men in addition to those regularly assigned to the car. It has been the practice to use men from the Dining Car Department for this purpose and the employes have never questioned or contended these employes were within the scope of the schedule and being used in Dining Car Service.

We respectfully submit the claim presented is without merit, and ask that it be denied.

All data has been made known to the employes and conference has been held on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant here, one C. Wilson, regularly assigned Second Cook, makes claim for the difference between the rate paid Second Cook and that of Chef, account of assignment to and service performed on Diner 106, on October 16, 1954. It is alleged that Rule 17, which reads as follows, was violated:

"RULE 17. COOKS

When four (4) employes are assigned to a kitchen from a terminal they shall be assigned as follows:

A Chef

A Second Cook

A Third Cook

A Fourth Cook

When three (3) employes are assigned to a kitchen from a terminal they shall be assigned as follows:

A Chef

A Second Cook

A Third Cook

When two (2) employes are assigned to a kitchen from a terminal they shall be assigned as follows:

A Chef

A Second Cook

When one (1) employe is assigned to a kitchen from a terminal he shall be assigned as follows:

A Chef"

The Organization asserts that Rule 17 specifically provides that in those cases where only one employe is assigned, as here, to a kitchen in a Diner such employe so assigned shall be a Chef; and that compensation granted Claimant here, that is, at the rate of a Second Cook was in violation of the aforesaid rule. It was pointed out that the Claimant, as a cook, could be assigned to no other portion of the Dining Car than the kitchen, and that the intention of the rule was to offer the protection of higher compensation to a lower rated classification when required to perform the role and duties of a higher clasification when no such higher classified employe was assigned.

The Respondent took the position that the Dining Car was not in the service of the Carrier at the time, but was in effect under the control of a private corporation. It was pointed out that no food was furnished or prepared on the Diner, said food having been supplied and put on the car by the company to which the car was furnished, no Chef's duties were performed, except possibly the making of coffee, a function which is ordinarily and customarily, performed by numerous classifications. It was further pointed out that Claimant, as a second cook had no seniority status as a Chef.

It is the opinion of the Board that Rule 17 above quoted, is clear and without ambiguity. While the Superintendent has the sole right under Rule 16 to determine the number of employes assigned to a Dining Car; the classifications to be assigned, upon such determination, that is the number required, is plainly and without exception set forth in the Rule. Where as here, it is determined that only one employe within the class standing alone, is required to be assigned; the employe must be designated as a Chef. In view of the fact that no mention was made of seniority in Rule 17, we must of necessity conclude that the parties did not intend that seniority, should be an integral factor in determining the employe to be assigned.

Having determined that a Chef should have, in the premises, been designated to fill the assignment, and it being evident that Claimant performed all of the duties that a Chef would have performed under existing circum-

stances, we conclude that the Claimant should have been paid at the Chef's rate of compensation.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due noticee of hearing thercon, and upon the whole record and all the evidence, finds and holds:

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 the Carrier violated the effective agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.