Award No. 9559

Docket No. DC-9198

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351

JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY—FORTH WORTH AND DENVER RAILWAY COMPANY (Burlington-Rock Island Railroad Company)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 351 on the property of Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company and Fort Worth and Denver Railway Company, that the classification of the employes known as waiter-porter and porter-waiter be rescinded as of January 21, 1956 for the reason that said classifications were unilaterally established by Carrier in violation of the Railway Labor Act and current agreement.

EMPLOYES' STATEMENT OF FACTS: For several years Carrier has arbitrarily and unilaterally employed employes working in the class and craft of employes for which Organization is the certified representative, in positions not included within the scope of the effective agreement. The effective agreement, a copy of which is on file with this Board, and which is incorporated herein by reference, became effective on February 1, 1947.

Reference to the scopy rule of the agreement shows conclusively that no position of waiter-porter or porter-waiter is included in the scope thereof. The fact is that the position of train porter or coach porter is specifically excluded from the scope of the agreement.

Notwithstanding the clear language of the scope rule, Carrier created the position of waiter-porter or porter-waiter several years ago. Carrier assigned to those positions employes holding seniority as waiters on the property who are specifically included in the scope of the effective agreement. These positions were established by Carrier without negotiation of any kind whatsoever with the Organization.

The duties of the position of waiter-porter or porter-waiter are to clean toilets and otherwise maintain cars to which these employes are assigned in the usual manner required of coach porters, to handle baggage of passengers, to load and unload passengers and to serve patrons food in dining cars. The employes assigned performed all of the aforemention duties during the runs

OPINION OF BOARD: The Claim, filed in 1956, is based upon the allegation that the classifications of waiter-porter and porter-waiter were established unilaterally.

We do not decide the procedural issue involving Rule 25 (d) because the claim is clearly without merit. The record shows that in November 1940 the Organization and the Carrier agreed to rates of pay for waiter-porters; at the same time the Organization and the Carrier agreed to a seniority list covering several categories of employes, including waiter-porters.

These 1940 agreements relating to waiter-porters show that the Carrier acted, not unilaterally as alleged, but with the consent of the Organization which recognized and bargained for the classifications in dispute.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Ilinois, this 16th day of September, 1960.