

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

NEW YORK CENTRAL RAILROAD COMPANY (Lines East)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 370 on the property of New York Central Railroad Company, Lines East

A. That Cooks E. Willis, C. Reddick, W. Profit, J. P. Brown and other employees similarly situated be compensated retroactively for each day that the Biltmore Hotel (New York City) or any other concern or party who prepares and cooks food and prepares sandwiches for sale to the public by Carrier on dining cars on Trains 119, 15, 154, 167, 138, 90 or any other train or trains similarly situated.

B. That Cooks E. Willis, C. Reddick, W. Profit and other employees similarly situated be compensated retroactively for each day Carrier directed or directs waiters-in-charge and/or waiters to prepare food and/or sandwiches and coffee for service to the public while cooks adversely affected are furloughed or available and not used on each of the dining cars on the above mentioned trains and on all other trains similarly situated.

C. That claimants and other employees similarly situated have their seniority and vacation rights restored to the extent adversely affected.

EMPLOYEES' STATEMENT OF FACTS: Under date of February 21, 1957, Organization initiated the instant claim with Carrier protesting Carrier's action in contracting for the preparation of food for sale on dining cars to outside concerns while cooks were furloughed and protesting the allocation of cooks' work to such firms not covered by the Agreement and further protesting the assignment of cooks' work to waiters or waiters-in-charge (Employees' Exhibit A). Under date of April 22, 1957, Carrier's Superintendent Dining Service denied the claims as submitted (Employees' Exhibit B).

"Except as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operation lies within the Carrier's discretion."

For the reasons hereinbefore set forth, Carrier submits the claim of the Employees in this case is without merit and should be denied.

All the facts and arguments herein presented were made known to the Employees during handling of the case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a controversy between the Joint Council of Dining Car Employees, Local No. 370, against the New York Central Railroad Company.

The question has arisen as to whether the carrier has a right to contract out the preparation of food for sale on its trains to carrier's passengers for consumption and whether this violates the agreement executed by and between the parties.

It is, therefore, necessary to read the Rules Agreement effective January 1, 1942, as revised or modified on various dates to and including July 15, 1953, with supplements thereto. We have also examined the Union Shop Agreement effective September 17, 1951, as amended February 1, 1953, which is in evidence.

The second dispute is whether or not the carrier violated the agreement herein referred to by allowing waiters or waiters-in-charge to perform certain other duties traditionally performed by cooks.

The undisputed fact is that some time prior to February 21, 1957, the carrier contracted with the Biltmore Hotel of New York City to have companies supply precooked food prepared for dining cars and whether or not there was anything in the agreement that prevented this.

Regardless of what the carrier may say, this food was cooked and the only question about that which confronts us is whether or not it was so prepared without violating the agreement.

Did the carrier have the right to go into the open market and purchase pre-fabricated plate foods from a company which produces such a product, and was this prevented by the contract? As much as I feel that there has been a technical denial of the rights of the employees, the fact remains, and we cannot find from an examination of the agreement itself, where the carrier was restricted to purchase various equipment and products and today in this jet age many things are done which could not have been done in days gone by.

It is not the question of whether or not the carrier did what was right, it was whether or not they stayed within the agreement without any violation thereof, and we must hold that a careful examination of the agreement will find there was no violation. Since there was no violation, we cannot hold for the employees.

The Board, however, does not agree with the carrier that the claims are improperly before this Division or that they are too vague and indefinite,

but having disposed of whether there is a violation of the agreement, this question is of no significance.

We feel that the facts in this case are well covered in the Award No. 5044 by Carter and we cannot feel that the carrier did actually violate the agreement as is more fully set forth in the Award by Mr. Justice Carter. See Award Nos. 4662; 7833; 7841; 7842; 7965; 9604 and 9918.

We believe that the contention relative to the violation of the rights of the waiters is not necessarily valid for we do not believe that there is anything that would indicate that the waiters were performing any duties that belonged exclusively to cooks.

We do not believe that the petitioners have sustained the burden of proof in actually showing an express violation of an agreement because we cannot feel that there is anything in this agreement that prohibits or otherwise restricts the carrier's right to purchase pre-fabricated plate goods. We must, therefore, deny the claim.

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 respective 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 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, Illinois, this 20th day of November 1961