

Award No. 10583

Docket No. DC-12046

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Eugene Russell, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL OF DINING CAR EMPLOYEES
LOCAL 848**

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 848 on the property of the Chicago, Burlington and Quincy Railroad Company, for and on behalf of W. Kyles, D. Ward, J. D. Robinson, B. T. Watkins, and all other employees similarly situated, that claimants be paid the difference between what they are now receiving on Trains 1 and 10 and the Chef Cook's rate of pay in accordance with Rule 28(d) of the existing agreement.

EMPLOYEES' STATEMENT OF FACTS: Under date of July 10, 1959, Employees filed the following claim:

"July 10, 1959

"Mr. H. G. Mott
Supervisor Crew Personnel
Chicago, Burlington & Quincy RR Co.
1447 So. Canal Street
Chicago 7, Illinois

"Dear Sir:

"Accept this as a time and money claim in behalf of the following employees: W. Kyles, D. Ward, J. D. Robinson, B. T. Watkins and other similarly situated.

"We request that these employees be paid in accordance with Rule 28(d) of the existing agreement. We further request that they be paid retroactive, due to the violation of this agreement and that they be paid the difference between what they are now receiving on Trains 1-10, dining car commonly known as the Chuck Wagon, and what they would have received as chef cook under the provisions of this rule.

"We further request that this violation be discontinued, and the Carrier bulletin the jobs in question as chef cook jobs in accordance with Rule 28(d) of the existing agreement.

"Very truly yours,

"Cecil L. Patrick
Business Agent, Local 848

"CLP:dlw

new dinette cars, just as it had always been applied on the old dinette cars in the past.

SUMMATION

In view of the evidence submitted herein, the Board can only conclude that—

1. Chuck Wagon cars 253 and 254 involved in this dispute are not "dining cars". For that reason, Paragraph (d) of Rule 28 is not applicable to this equipment.
2. Chuck Wagon cars 253 and 254 are actually "dinette cars", and this is proved by—
 - A. The physical characteristics of cars 253 and 254 which are markedly different from full size dining cars, and similar to dinette cars Silver Beam and Silver Bell which they replaced.
 - B. The type of food service offered as evidenced by the Chuck Wagon menus, which is a short order service, similar to that offered on the old dinette cars, Silver Beam and Silver Bell. It is a much less complete food service than that offered on a "dining car".
 - C. The number of meals served and meal revenue, particularly the average revenue per meal served on the Chuck Wagon cars, prove that the passengers use it for short order service of the type usually found on dinette cars.
 - D. The personnel employed in the kitchen of the Chuck Wagon cars, where the consist is much smaller than the dining cars.
 - E. The practice on this property in other cases of applying coach cafe cook rates of pay to the employe in the kitchen of a small food serving car of this type.
3. The Section 6 notice served by the Organization under date of October 17, 1956 (Carrier's Exhibit No. 5), and subsequent negotiations held on that notice, constitute an admission by the employes that the present agreement does not provide for any greater rate of pay for the Chuck Wagon cooks than is now being applied to them.
4. The rate of pay specified in Rule 2 of the agreement under the heading "Dinette Cook-1-10" is being properly applied to the cooks on Chuck Wagon cars 253 and 254.

In view of the above and foregoing, this claim must be denied.

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All data herein and herewith submitted have been previously submitted to the employes.

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(Exhibits not reproduced.)

OPINION OF BOARD: From a study of this record and previous awards this Board must agree with the contention of the Carrier that Rule 28(d) of the Agreement has not been violated since it is not applicable in this case for

the reason that the cars involved in this claim are, not Dining Cars as specified in the Agreement but are, under the facts in this record, actually "dinette cars".

This conclusion is based on the uncontradicted facts as follows:

- "A. The physical characteristics of cars 253 and 254 which are markedly different from full size dining cars, and similar to dinette cars Silver Beam and Silver Bell which they replaced.
- B. The type of food service offered as evidenced by the Chuck Wagon menus, which is a short order service, similar to that offered on the old dinette cars, Silver Beam and Silver Bell. It is a much less complete food service than that offered on a 'dining car'.
- C. The number of meals served and meal revenue, particularly the average revenue per meal served on the Chuck Wagon cars, prove that the passengers use it for short order service of the type usually found on dinette cars.
- D. The personnel employed in the kitchen of the Chuck Wagon cars, where the consist is much smaller than the dining cars.
- E. The practice on this property in other cases of applying coach cafe cook rates of pay to the employe in the kitchen of a small food serving car of this type."

The rate of pay specified in Rule 2 of the Agreement under the heading "Dinette Cook-1-10" is being properly applied to the Cooks of Chuck Wagon Cars 253 and 254.

Award No. 7859 cited by the Organization is not applicable in this case. On the other hand Awards No. 5964, 6247 and 6280 support this view.

Based on the facts in this case we find no basis for a sustaining award.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 3rd day of May 1962.