

Award No. 10609

Docket No. DC-10086

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 370 on the property of the New York Central Railroad, hereafter referred to as the Carrier, for and on behalf of Cooks J. Jackson, W. Brazille and J. McClendon; and Waiters Sidney Gore, C. N. Hart and H. Elliott and all others similarly situated, arising out of violation by the Carrier of Rules 4(a), 4(d) and 4(g) and claiming that cooks' and waiters' positions on Trains 50-51 (The Empire State Express) be posted for bid in New York City and awarded to claimants, that they have their vacation rights adjusted and that they be compensated retroactively for all time on Trains 50-51 allotted to employees of seniority districts other than New York.

EMPLOYEES' STATEMENT OF FACTS: At its inception, the Empire State Express carried six regularly assigned waiters and four cooks. After World War II, the Carrier began reducing the dining car personnel until at present there are only three regularly assigned waiters and two regularly assigned cooks. All bids for waiters and cooks have been advertised in the New York seniority district until sometime in the past year or two. At that time the Carrier began to realize that it had cut the dining car staff too low. It, therefore, began putting on additional waiters and cooks on Train 51 from Buffalo West and on Train 50 East of Buffalo. The Carrier without notifying Local 370, took these additional employees from the Buffalo Seniority District rather than the New York Seniority District.

The Union protested this unilateral action of the Carrier in removing work which for many years had been assigned to the New York Seniority District and assigning it to another seniority district. On November 23, 1956, the Local Chairman filed a time claim for employees adversely affected by loss of work in the New York Seniority District (Employees' Exhibit A). The Superintendent of Dining Service denied the claim (Employees' Exhibit B). On February 27, 1957, the General Chairman of Local 370 appealed the decision denying the claim to the Manager of the Dining Service Department, the highest officer on the property to consider such appeals (Employees' Exhibit C). On March 5, 1957, that official denied the appeal of the claim (Employees' Exhibit D).

accepted as inherent prerogatives of Management. These ordinarily include distribution of the work load and direction of the working force."

Award No. 6442, Third Division

"If the Carrier has the unlimited right to add workers to its force, then it has the limited corollary right to remove them, subject to those provisions which the Carrier voluntarily assumed by signing the governing agreement."

Award No. 6945, Third Division

"The Carrier may in the interests of economy and efficiency of its operations abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of the collective agreement. However, when doing so, the work of the positions abolished must be assigned to and performed by the class of employees entitled thereto."

Conclusion

For the reasons hereinbefore cited, Carrier respectfully submits that the claim of the Employees in this docket 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: As of November 23, 1956, the home terminal for dining car crews assigned to trains 50 and 51 operating between New York and Cleveland and Detroit was New York City. As of that date two cooks and three waiters were assigned on each train out of New York on the New York-Cleveland and New York-Detroit cars. "On the westbound trip on train 51 a third cook and a fourth waiter were added to the crew at Buffalo to assist in serving the dinner meal between Buffalo and Cleveland. On the eastbound trip train 50, a third cook and a waiter whose home terminal also was Buffalo were assigned to the train from Utica to New York for the purpose of assisting the balance of the crew in serving the dinner meal."

For many years swing shift cooks and waiters were assigned on train 51 out of Buffalo (R68-69). Also dining car employees on train 51 were assigned from the Buffalo District (R67). The record shows that cooks and waiters for trains 50 and 51 (R70 and 71) were assigned to these trains from both New York City and Buffalo.

We had occasion to discuss the seniority practice of dining car employees in Award 10607. The same principle applies to this case. We also discussed in Award 10607 the principle of past practice and that, too, is applicable here.

The mere fact that the Carrier reduced the number of cooks and waiters on these trains does not change the fundamental principle, nor does it change our position. We have consistently held in numerous cases that the Carrier has the right to abolish positions, increase or reduce the number of employees involved and to use as many employees in the required positions as the Carrier desires, if in so doing no Rule of the Agreement is violated. See Awards 4939 (Carter), 5331 (Robertson), 6187 (Wenke), 6270 (Smith), 6442 (Ferguson), 6945 (Messmore), 6877 (Carter) and others. The size of the dining car crews

on trains 50 and 51 varied from time to time, over a period of sixteen years (R22). The Agreement was not violated by reducing the dining car crews.

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 the Agreement has not been violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.