Award No. 11738
Docket No. DC-10193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 385 on the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for and on behalf of H. M. Mason, Buffet Attendant and other employes similarly situated for all time lost on Trains 15 and 16, Chicago to Tacoma, Washington and return; as a result of Carrier, on February 4, 1957, assigning their work to other persons having no seniority in the classification of Buffet Attendant.

EMPLOYES' STATEMENT OF FACTS: On August 30, 1957, Carrier issued its Bulletin No. 7-133 to Dining Car Stewards: 7-40 to Dining Car Chefs; 7-22 to Dining Car Waiters; and 7-48 to Buffet Attendants, attached hereto as Employes' Exhibit A. This bulletin announced that effective September 4, 1957, the Tacoma and Minneapolis Equipment on Trains 15 and 16 will operate in a consolidated section between Chicago and Minneapolis with one Diner. As a result of the consolidation, the Carrier announced that it was abolishing the operation of the three Dining Car crews operating between Chicago and Minneapolis and return and abolishing the then present operation of 10½ Buffet Attendants on the Tacoma Dome Car, Trains 15 and 16. It was further announced that on that same date the carrier would assign three Dining Car crews to operate Trains 27-5-2 Chicago to Minneapolis and return and three Buffet Attendants to operate Chicago to Minneapolis and return on the Dome Car.

Under date of September 3, 1957, Carrier issued its Bulletin No. 7-137 to Dining Car Stewards and 7-23 to Dining Car Waiters, Trains 15 and 16, attached hereto as Employes' Exhibit B. That bulletin reads as follows:

> "Effective September 4, 1957, out of Chicago, the No. 3 waiter from the Dining Car will be assigned for beverage service in the Dome Car between the hours of 11:00 A. M. until 5:30 P. M., and from 7:30 P. M. to 10:00 P. M.
>
> "As no Attendant will be assigned to Dome Car west of Minneapolis, the Waiter will handle all beverage service by getting the beverage from the Dining Car Steward with a check to cover, presenting check to guest according to current instructions.

On Train 15 from Minneapolis to Tacoma, and on Train 16, from Tacoma to Minneapolis effective September 4th, 1957, it will be understood that as of that date food service which the Buffet Attendant prepared in the Dome Car and for which he was responsible was entirely discontinued since which time there is no Buffet Attendant service in existence in the Dome Car on Trains 15 and 16 West of Minneapolis.

There is absolutely no merit in the instant claim, therefore, the Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes.

OPINION OF BOARD: The question presented is whether, under the provisions of the Bulletins set forth in Employes' Submission, the Company violated the Agreement by assigning a Dining Car Waiter to serve beverages, including "mixed drinks" obtained by him from the Dining Car Steward, to guests in the Dome Car.

The Organization contends that the work of preparing and serving such beverages, including the preparation of mixed drinks to be served on the Dome Car, is exclusively the work of Buffet Attendants.

The Organization makes the assertion that after September 4, 1957, the effective date of said Bulletins, the waiters assigned to such beverage service on the Dome Car were required to mix drinks which were carried on the menu of that car as "Mixed Drinks". This assertion, which was expressly denied by the Carrier, is unsupported by any proof, and is therefore not evidence of the fact asserted. In other words the record contains no proof to show that the waiters, as well as the Buffet Attendants and the Dining Car Steward, are not carrying out their respective duties in accordance with the provisions of Bulletins hereinbefore mentioned.

The questions raised by the Organization with respect to the handling of mixed drinks and the exclusivity of the work of preparing drinks carried on the menu as "Mixed Drinks" were not raised for the first time by the parties to this proceeding. Such questions were raised and officially agreed upon by these same parties on November 9, 1953, as is evidenced by Employes' Exhibit "J", set forth below.

"CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
Sleeping and Dining Car Department

Chicago, Ill. November 9, 1953

File: 520-S.Beverages-Instr-A-5

CIRCULAR LETTER NO. 3-21 TO: ALL EMPLOYES:

In order to clarify the handling of mixed drinks in dining cars and cafe parlor cars the following instructions will prevail;

It is agreed that the preparation of mixed drinks in the Dining Cars, and Cafe Parlor cars will be handled as follows:

The Carrier will provide mixed drinks in individual bottles for Manhattans, Martini, Old Fashioned, and Whiskey Sours. It is understood that any personnel on the train can serve and mix the usual

drinks, such as Whiskey and Soda, Whiskey and Coke, Rum and Coke, etc., but that the drinks other than those mentioned such as Tom Collins, Rum Collins, Whiskey Collins, when they are carried on the menu, will be the responsibility of the Steward, or Waiter in Charge when Steward not assigned to the car.

/s/ M. P. Ayars
Superintendent.

cc: Code list No. 1.
Mr. F. Hamilton."

It is obvious from the above Exhibit that the work of mixing drinks is not exclusive to Buffet Attendants but that it is the responsibility of the Steward or the Waiter-in-Charge when the Steward is not assigned to the car.

Dining Car Waiters had been assigned to the Dome Car to handle the service of food and beverages, including mixed drinks, ever since the Dome Cars were first operated by the Carrier, which was several years prior to September 4, 1957. During those years the beverages which the Waiter served to the guests were the beverages which he obtained from the Buffet Attendant. Since September 4, 1957, the beverages he served to the guests were the beverages which he obtained from the Steward.

Since the waiters assigned to the Dome Cars to handle the service of beverages since September 4, 1957, were not performing the work of Buffet Attendants anymore than they had been at any time before that date, we have concluded that the Agreement was not violated.

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 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, Illinois, this 26th day of September 1963.

LABOR MEMBER'S DISSENT TO AWARD NO. 11738
DOCKET NO. DC-10193

The majority decision in this docket is based primarily on certain misleading statements found in Carrier's "Reply to Employes' Initial Submission," and Carrier's Bulletin No. 3-21, Employes' Exhibit "J" in the record.

The Board states that the "Organization contends that the work of preparing and serving such beverages, including the preparation of mixed drinks to be served on the Dome Car, is exclusively the work of Buffet Attendants." Exhibit "J" is then referred to so as to show that this service is not exclusively the responsibility of Buffet Attendants; that Stewards and Waiters-In-Charge are also charged with this responsibility. Finally, the Board finds that Waiters had been assigned to the Dome Car to handle the service of food and beverage, including mixed drinks, and that the only difference between the operation contested in this docket and the previous practices is that the Waiter, in the one instance, obtained the beverage which he served to the guest from the Buffet Attendant; whereas, in the instant Docket, the beverages are obtained from the Steward.

This reasoning of the Majority ignores several important facts. First, the Bulletin referred to restricts the responsibility of in-charge employes to the preparation and service of beverages **on the car to which they are assigned.** Stewards and Waiters-In-Charge cannot be assigned to Dome cars. Second, Waiters were only assigned to Dome cars to assist the In-Charge employes assigned to that car, i.e., Buffet Attendants. When only **one** (1) employe is assigned to the Dome Car, he must be a Buffet Attendant. As a consequence, the statement that "waiters assigned to the Dome Car to handle the service of beverages since September 4, 1957, were not performing the work of Buffet Attendants any more than they had any time before that date," is clearly in error. Before September 4, 1957, he worked in the Dome Car under the jurisdiction of the Buffet Attendant. Now, he works in the diner under the jurisdiction of the Steward.

Should the Carrier have taken the Steward off the diner and allowed the Waiter assigned to the Dome Car to serve food and beverage to guest in the diner and obtained from the Buffet Attendant, the situation would be analogous. Under these circumstances, the Waiter and Buffet Attendant would clearly be performing work belonging exclusively to Stewards, and that is, the supervision and service of food and beverage in a car on which only a Steward can be assigned as the In-Charge employe. It necessarily follows that the service of beverage on a Dome Car by a Waiter assigned to a diner is no less a violation of the agreement, as service in the Dome Car must be restricted to employes assigned to that car. When there is only one employe assigned to a Dome Car, he must be a Buffet Attendant.

For the above reasons I dissent.

G. Orndorff