

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Bernard J. Seff, Referee**

---

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370**  
**THE NEW YORK, NEW HAVEN AND HARTFORD**  
**RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Union Local 370 on the property of the New York, New Haven & Hartford Railroad Company for and on behalf of Third Cooks H. Kearney, Hezzie Burke, T. C. Linscomb, Jesse Harris and all other Third Cooks similarly situated, that they be compensated retroactively for each and every day a Second Cook is assigned as Second Counterman on trains Nos. 12 and 27.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to posting of seniority rosters in 1947, Second Cooks, third cooks, first countermen and second countermen each constituted a separate seniority class. Effective with posting of 1947 rosters, second cooks' roster was merged with roster of first countermen and third cooks' roster with that of second countermen. The net result of these mergers was that second cooks and first countermen became a single seniority class, the only difference being that when assigned to regular dining cars they are designated as cooks and when assigned to grill cars, they are designated as countermen. This is further evidenced by Memorandum of Understanding dated April 5, 1949, paragraph B in particular.

Prior to and after the effective date of the agreement between the parties and continuing after the mergers of the seniority rosters in question, both first and second countermen have been and are assigned to the Carrier's grill cars. The respective duties of first and second countermen have become clearly defined by past practice. Second countermen take all orders, make sandwiches, and relay all other orders to the first countermen. As a matter of fact, it would be physically impossible for the first countermen to perform the duties of the second countermen, or the reverse. A metal barrier separates the kitchen where the first counterman performs his duties, from the area where the second counterman performs his duties.

Carrier posted for bid, by second cooks (first countermen) assignment which included work as second cook on trains 188-189 and relief work as second counterman (third cook) on trains 12-27. Organization filed time claim on behalf of the claimants herein under date of July 25, 1958, contending that third cooks' work (second countermen) could only be posted for bid by third cooks. August 8, 1958, Carrier's Manager Dining Service denied the claim.

The schedule contains no crew consist rule. There is no rule in the Agreement prohibiting Carrier from changing the number of employees in Dining and Grill Car crews to meet changing service requirements. It has been the practice that, in order to fill out a regular assignment, an employee may be required to work on different positions on different days of the week.

There is no rule in the Agreement which defines the duties of the classifications shown in Rule 3. Generally, there is an overlapping of duties of the various classes when necessary adjustments are made in Dining and Grill Car crews. Carrier submits that there is no prohibition, by practice or schedule rule, against an employee working in more than one class of service. Subject to seniority and qualifications, employees are used in various classes of service. In fact, in the instant dispute position of Second Cook (qualified Second Counter) on Trains 188-189NH-12-41-27 was agreed to verbally by the Local Chairman. The employee involved, rostered in both classes, was paid the higher rate of Second Cook for the entire assignment.

Absent specific rule governing, Carrier submits that the assignment of Second Cook (qualified Second Counter) on Trains 188-189NH-12-41-27 is entirely proper.

In First Division Award 15615 (Referee Mabry) it is held that:

"This Board is without authority to direct methods of operation when no rule or agreement has been violated by the practice sought to be changed."

Summing up, it is Carrier's contention that:

- (a) There is neither rule nor practice supporting the instant claim.
- (b) The position in dispute, i.e., Second Cook (qualified Second Counter) was advertised as such in concurrence with the Local Chairman.
- (c) The employee affected was paid the higher rate of Second Cook for the entire assignment in agreement with the Local Chairman.

The claim is without merit and should be denied.

All of the facts and argument contained herein have been affirmatively presented to the Organization on the property.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On June 18, 1958 the Carrier posted a bulletin advertising for bid certain crew runs to become effective June 30, 1958. Included therein was an assignment for a Cafe Chef qualified First Counterman and also a Second Cook qualified Second Counterman.

The Organization took exception to the advertisement for Second Cook qualified Second Counterman contending that First Countermen and Second Countermen are separate seniority classes, and also alleged that Carrier failed to give effect to the principle of seniority when it posted for bid a run on which second cooks were to work part of the assignment as second countermen.

The Carrier defends on the basis that similar assignments have been made over the years and that no rule of the Agreement prohibits such assignments.

The basic issue presented is whether the assignment was proper. The Organization has cited no rule which prohibits such assignment. In the absence of any contractual provision relied upon by the Organization in this particular dispute, the claim is denied.

**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 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 1963.