

Award No. 11905
Docket No. DC-11352

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516
GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 516 on the property of the Great Northern Railway Company for and on behalf of Second Cooks R. Kiefhaber, P. Madden, R. Mulcrone, R. Fredeen, R. Jodl, D. Jansen, G. Kruse, D. Campbell and K. Riddick for the difference between the rate of pay for Third Cooks and the rate of pay for Second Cooks from November 2, 1958 until such time as they are properly paid while assigned as the second kitchen employe performing the duties of Second Cook on Western Star diners, Great Northern Trains Nos. 3 and 4.

EMPLOYEES' STATEMENT OF FACTS: This claim involves a factual situation identical with that of another dispute now before your Board, the only difference being that different claimants, different date and different Trains are involved. In addition, Employees are attaching hereto as our Exhibits A, B, C, D and E, which set-forth the facts and our position in this dispute was handled to conclusion on the property.

POSITION OF EMPLOYEES: Employees have further attached copy of our Ex Parte Submission in the prior identical dispute referred to above, and request that your Board consider the arguments contained in that Submission as equally applicable here. The only thing Employees wish to add to the argument in that submission is a statement made by this Carrier in its Reply to Employees' Position in another dispute before your Board, Docket DC-8776, in which the Carrier states on page 2:

"The employees assert that 'preparing sandwiches and toast, washing dishes and doing the side work usually, ordinarily and traditionally (belong) to the class of service of second cooks.' This statement is contrary to the practices on this property. Second cooks' duties have traditionally been frying and baking. The duties described by the employees have been performed by waiters-in-charge for many years." (Emphasis ours.)

Carrier's position in Docket DC-8776 is that it is not required to assign a second cook to the coffee shop car on Trains Nos. 3 and 4, because the

rule or agreement between Carrier and the Employees which deprives the Carrier of its right to establish, change and abolish assignments as in the instant case. Likewise, there is no rule or agreement which grants the Employees the power to veto the exercise of this right by the Carrier, or to compel the continuation or establishment of any particular assignment run or service. The additional rights which the Organization is pursuing in this case cannot be vested in or possessed by them until such time as such rights are expressly relinquished to it by agreement.

2. Bulletin No. 116 was issued in compliance with the applicable rules of the controlling Agreement.

3. There is no rule in the controlling Agreement, nor is there any memorandum of agreement or understanding between Carrier and the Organization whereby Carrier was, or is, required to assign second cooks to the kitchen crews of diners.

4. Carrier was not required to confer or negotiate with the Organization prior to establishing the new kitchen crew assignments on the diners effective November 2, 1958.

5. It has been a generally recognized principle and so held by all divisions of the Adjustment Board that Carrier is free to adjust its service to meet the needs of the public and to effect practical economies in the absence of any contractual limitation thereon. No such restriction appears in the controlling and applicable Agreement.

For the foregoing reasons, the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier operates a train known as the Western Star between St. Paul, Minnesota, and Seattle, Washington. It is the consist of the kitchen crews on the dining service units on Trains Nos. 3 and 4 with which we are concerned in this dispute. In a notice dated October 31, 1958, Carrier abolished all Second Cook assignments on Trains 3 and 4 and on that same date issued a bulletin advertising for Third Cooks to occupy regular positions on the diners on Trains 3 and 4.

It is the contention of the Claimant that, at the time that Carrier abolished all Second Cook assignments, much of the work of a Second Cook remained in the position bulletined for Third Cooks.

However, Carrier contends that by November 1, 1958, Carrier's volume of business on these two trains had been materially reduced, resulting in a radical decrease in customer patronage on the diners making it no longer economically sound for Carrier to offer menus containing such a wide selection of food items as had been offered prior to that date; that this reduced the work load of the Second Cooks to such an extent that the need for Second Cooks disappeared. There is no denial by the Claimant that the volume of business had decreased as urged by the Carrier.

Carrier further contends that by the latter part of May, 1959, the level of passenger business on Trains 3 and 4 had increased to the extent that

it was again practical for the Carrier to offer menus containing a wide selection of food items; the simplified menu was discontinued and a wider selection of foods was restored and placed into effect so that there was again a necessity for Second Cooks and there were assigned ten (10) Second Cooks.

The Carrier relies on Rule 13(i) of the Agreement:

"(i) CONSIST OF CREW AND DUTIES

"The consist of crews will be determined by the Management, consistent with service requirements, and the duties will be equitably assigned as between the members of the crew . . ."
(Emphasis ours.)

Rule 13(i) specifically states that it is the prerogative of Management to determine "The consist of crews . . . consistent with service requirements". That is what the Carrier did in the instant case.

Though the facts involved here are not precisely analogous to the facts contained in Award No. 11900, the issues presented are identical. Having determined in that award that the claim be denied, we are constrained to accept it as a precedent in the determination of the present matter.

See also Award 8828 (Bakke).

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 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.