Award No. 13298
Docket No. DC-14560

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiters Otis Floyd and James B. Williams and Third Cooks Charles Perry and Robert Chambers assigned to Carrier's Trains 17-18, May 2-3 and May 9-10, 1963, that Claimants be paid for time they would have made had not Carrier replaced Claimants with persons not covered by the Agreement, Fort Worth, Texas, to Houston, Texas, and return, in violation of the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: Carrier's Trains 17-18 operate between Minneapolis, Minnesota and Houston, Texas, over Rock Island Lines, Minneapolis to Fort Worth, and over the Joint Texas and the B.R.I., between Fort Worth and Houston. Memorandum of Agreement, dated July 6, 1949, governing the assignment of crews in this interline service, provides:

"It is agreed:

"(1) Dining car service on Twin Star Rocket Trains 507-508 between Houston, Texas and Minneapolis, will be manned on the basis of three Rock Island and two Joint Texas Division dining car crews. The three Rock Island dining car crews will relieve and be relieved at Kansas City and the Joint Texas Division dining car crews will relieve and be relieved North-bound on Train 508 at Fort Worth.

"(2) Joint Texas Division employes will establish no senioriey as Rock Island men while operating on Trains 507-508.

"(3) Rock Island employes will establish no seniority as Joint Texas Division men while working in the place of a Joint Texas Division man under Item 4 of this agreement.

"(4) Extra, irregular or casual employment to fill the place of a Joint Texas Division employe during voluntary lay-off, vacations, or because of no Joint Texas Division employe available, will be filled by extra employes from Rock Island seniority roster." (Emphasis ours.)

instant claim. Carrier relates to the Board the fact that extra employes have always been used on Joint Texas Division except as provided in the 1949 Agreement for relief work on the Joint Texas Division. Also, as information, the original Agreement covered Dining Car employes, but was later extended to cover other sleeping and dining car employes such as chair car attendants and porters.

To interpret the 1949 Agreements in any other manner would convey to the Rock Island crews more service rights on the Burlington Rock Island than the Agreements had intended and upset the proportional arrangement of assigning crews that the 1949 Agreements require. The 1949 Agreements stated that crews operating between Minneapolis, Minnesota and Houston, Texas were the only crews covered by the interline Agreements. Additional assignments between other points on either the Rock Island or the Burlington-Rock Island are not covered by the 1949 Agreements. Carrier presents as Exhibit "E" a letter addressed to Mr. W. S. Seltzer, General Chairman, Dining Car Employes, Union Local No. 351, representing the Burlington-Rock Island Dining Car employes, dated December 1, 1949. Carrier's position regarding other assignments on Trains No. 17 and 18 was clearly outlined at the bottom of Page 1 and top of Page 2 of the letter. This arrangement has been in effect for over fourteen (14) years. The Organization would now have the Board upset this long established application of the 1949 Agreements. To extend the coverage of the clearly written Agreements and long established practices would be to add additional coverage and scope to the Agreements and, of course, the Board has no power to add to the present rules or Agreements.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier operates its trains Number 17 and 18 between Minneapolis, Minnesota and Houston, Texas, in interline service. These trains operate over the Rock Island from Minneapolis to Fort Worth, Texas and over the Burlington-Rock Island, a separate operation between Fort Worth and Houston, Texas. The employes of the Burlington-Rock Island Railroad are represented by their own Dining Car Union, Local 351 and hold seniority on the Burlington-Rock Island Railroad. Likewise, the Rock Island employes hold seniority on the Rock Island Railroad only. Claimants in this case were assigned to their respective trains in extra service from Kansas City, Missouri of Fort Worth, Texas, where they were released. Two extra employes from the Burlington-Rock Island Railroad were assigned to the trains from Fort Worth, to Houston and on the return trip from Houston to Fort Worth, where they were released. The Petitioners allege that this is a violation of the Scope Rule.

There is in evidence a special interline service Agreement, dated July 6, 1949, which was in effect at the time of the Claim and reads as follows:

"It is agreed:

"(1) Dining car service on Twin Star Rocket Trains 507-508 between Houston, Texas and Minneapolis, Minnesota, will be manned on the basis of three Rock Island and two Joint Texas Division dining car crews. The three Rock Island dining car crews will relieve and be relieved at Kansas City and the Joint Texas Division dining car crews will relieve and be relieved North-bound on Train 508 at Fort Worth.

"(2) Joint Texas Division employes will establish no seniority as Rock Island men while operating on Trains 507-508.

"(3) Rock Island employes will establish no seniority as Joint

Texas Division men while working in the place of a Joint Texas Division man under Item 4 of this agreement.

"(4) Extra, irregular or casual employment to fill the place of a Joint Texas Division employes during voluntary lay-off, vacations, or because of no Joint Texas Division employe available, will be filled by extra employes. . . ."

This Agreement, as can readily be seen from reading it, is silent insofar as the assignment of extra employes is concerned, except for the provisions of Paragraph 4 which are inapplicable to the instant dispute. We are unable therefore to say that any segment of this Agreement has been violated.

We then direct our attention to the Scope Rule, and find that once again we are confronted with a broad, general rule, which lists the positions covered by the Agreement but does not describe the work to be performed. We must therefore in conjunction with the numerous precedents established by this Board, look to the tradition, practice and custom on the property. In order for us to sustain the claim, the Petitioners must show by a preponderance of evidence, that through tradition, practice and custom, they have had an exclusive right to the work performed. The record does not reveal that degree or amount of probative evidence requisite for a sustaining award. Quite the contrary, the Carrier states emphatically that the work involved, has been performed as in this case, for the past fourteen years. The fact has not been specifically denied by Petitioners. They merely make general statements to the effect that cooking and waiting on tables, etc., has customarily been performed by them without offering any evidence that this specific work over this territory is included. Superimposed on this is the fact that the Contract does not contain any explicit or implicit prohibition against the Carriers' action in this case. Although the special Agreement quoted infra, covers the Carrier's regular crews while traveling over the trackage of another line, it is silent insofar as the extra employes are concerned. This combined with the failure of the Petitioners to present this Board with substantial evidence to prove that through tradition, practice and custom, they have an exclusive right to the work, gives us no alternative other than to deny the claim.

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 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 12th day of February 1965.