

**Award No. 13483**

**Docket No. DC-14785**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Levi M. Hall, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES LOCAL 374**

**THE TEXAS & PACIFIC RAILWAY CO.**

**STATEMENT OF CLAIM:** Claims of Joint Council Dining Car Employees Local 374, on the property of the Texas and Pacific Railway Company,

(1) for and on behalf of Waiters M. C. Bailey, Shannon Durkee and Leon Jefferson, assigned to Trains Nos. 21 and 22; Jessie Clark and A. C. McFadden, assigned to Trains Nos. 27 and 28, and all other employees similarly situated, that they be paid the difference between the waiter's rate of pay and the rate of pantryman for each trip Carrier fails to assign a pantryman to its Trains 21-22, 27-28, in violation of the Agreement;

(2) for and on behalf of Waiters M. C. Bailey, Shannon Durkee, Leon Jefferson, and all other employees similarly situated, that they be paid the difference between what they did and will earn and what they would have earned had Carrier assigned waiters and pantrymen to perform pantrymen's work on Trains 21 and 22, instead of Waiters-In-Charge, in violation of the Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to September 8, 1963, crew assignment on Carrier's Trains Nos. 21-22 and 27-28 (excluding kitchen personnel) consisted of one (1) waiter; one (1) pantryman, and one (1) waiter-in-charge. The current rates of pay for these employees, effective May 1, 1962 is \$446.93 for waiters-in-charge; 424.33 for pantrymen, and \$419.33 for waiters.

On or about the above date, Carrier abolished the position of pantryman on the trains in question. Carrier further, on the 3rd day of October, 1963, abolished the position of waiter on Trains 21-22, leaving a one (1) man crew, consisting of a waiter-in-charge on these trains. In this instance, unlike the September 8, 1963 abolishments, it was the lowest rated employee who was taken off the assignment.

Under date of September 16, 1963, Employees filed time claim on behalf of waiters assigned to Trains Nos. 21-22 and 27-28, requesting that claimants be paid the difference between the waiters rate of pay and the rate of a pantryman. (Employee' Exhibit "A".) Carrier responded to this letter on the 18th day of September, 1963 and declined the claim on the basis that the waiter-in-charge, and not the waiter assigned to the Trains were to do the

eggs.' They also served drinks which, we **must** assume, included coffee. Since there were no cooks on board, the waiter-in-charge must have prepared the coffee. See also **Awards** 5308, 6309 and 5310 (Robertson) and Awards 8828 (Bakke) and 8886 (**McMahon**). The preparation of coffee is not **exclusively** the work of employees in the cooks classification."

In the present case, there is no rule requiring us to have positions of Pantrymen on all crews or on any crew, and **no** rule defining the duties of a Pantryman **when we do have** one, and no **practice** to give him the exclusive right to do **anything** that has been required of the **Waiters** here in question. After the Pantryman jobs were cut off, the Carrier did not assign to Waiters **any** new tasks, **which had** not previously been performed by Waiters. There is **simply no rule** or practice to base this claim on, and no basis for contending that the agreement was violated by the events here in question.

In so far as the claim purports to be for persons not named, the Carrier protests that it cannot be sustained, as the Carrier cannot ascertain **the** identity of **the proposed** beneficiaries, nor the dates and amounts and issues **in** controversy, and that it should be dismissed, in any event, because the Union did not **specify** nor **attempt to specify** those matters in handling this case on the **property**.

Item 2 of the claim, as referred to your Board, appears to have been added to the case in transit, somewhere between **Texas** and Chicago, after it was last handled on the **property**. It was not presented to the Carrier, nor handled with the Carrier, and we are not even sure what it means or to what it refers. It should be dismissed in any event.

For the reasons stated above, and in the Awards cited, and by the Carrier in the attached Exhibits, the Carrier respectfully requests the Board to dismiss or deny all claims involved in this case.

(Exhibits not reproduced.)

**OPINION OF BOARD:** From an examination of the Record it appears conclusively that the claim set forth in Paragraph (2) of the **Statement of Claim** was not progressed on the property in the required manner in that it was **neither** presented to nor discussed with the Carrier on the property. For the foregoing reason that portion of the claim will have to be dismissed.

With regard to the claim presented in Paragraph (1), it appears that, prior to September 3, 1963, the crew assignments to Carrier's Trains 21-22 and Trains **27-28** consisted of one waiter, one pantryman and one **waiter-in-charge**. On September **6th**, 7th and **8th**, 1963, respectively, position of pantryman on the **crews** on Trains 21-22 was abolished, **and** the position of pantryman on Trains **27-28** was abolished at the end of the tours of duty on September **7th, 1963**.

The position of **pantryman is a higher rated position than that of waiter** and it is the **contention** of the Claimants that if the Carrier was obliged to reduce the consist of the crews that the lower rated positions should have been abolished **first** and that this has been the practice on this property; that some of the duties of the pantrymen were assumed by waiters-in-charge and that such action was **violative** of the agreement because under Rule 8 **waiters-in-charge** were in a separate seniority class from pantrymen **and that the** employees of one seniority **class** cannot perform the duties of another seniority class-in substance, the Claimants contend that none but **pantrymen may** perform **pantrymen's** duties.

It is the contention of the Carrier that the reduction in the size of the **crews** was necessitated because of a decrease in business, that many of the duties of **pantrymen** and waiters had always been performed in common and any other duties of the pantryman were reassigned to waiters-in-charge; Carrier further contends that neither by **practice** nor otherwise have specific duties been allocated to pantrymen or waiters.

There is nothing in the agreement between the parties hereto that prohibits the Carrier from reducing its forces. In fact, Rule 9 of the **agreement** anticipates **there** will **be** such reductions. As was stated in Award 10099 (Rose) :

"It is well established that in the absence of prohibitions in the collective agreement, and subject to the requirements thereof, management may abolish positions which are **not** needed and rearrange the work to be performed by the class or **classes** of **employees** entitled to such **work**. See Awards 5331, 5664, 6184, 6187, 6839, **9806**."

Nor anywhere in the instant agreement is there any **rule** which requires that in reducing the crew Carrier is obligated to discontinue the lowest rated position first. The Record doesn't disclose that such a principle has been applied as a matter of consistent practice on this property. This Board is powerless to supply a rule where none exists in the agreement.

There is **no** rule in the agreement, either, that defines the duties of **pantrymen, waiters-in-charge** or waiters, nor is there anything in the Record that lends any assistance in defining **what** their respective duties might be. Nor **has** any **rule** been cited **by** Claimants which prohibits a waiter-in-charge, a higher rated employee, from performing the duties of a pantryman.

Claimants have the burden of sustaining or proving their **claim before** this Board but an examination of the Record discloses they have totally failed **to** do so.

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 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 (1) denied.

Claim (2) **dismissed** in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. **Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1966.