

Award No. 14025
Docket No. MW-15052

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it arbitrarily and unilaterally removed and/or omitted the names of Bridge and Building Helpers (cook) A. H. McNair, L. M. Day, E. M. Fricke and D. L. Johnson from the B&B helper's seniority roster dated July 1, 1963 and from subsequent rosters. (Carrier's file 1166-a)

(2) The Carrier be required to restore the names of Bridge and Building Helpers (cook) A. H. McNair, L. M. Day, E. M. Fricke and D. L. Johnson to the B&B helper's seniority roster.

EMPLOYES' STATEMENT OF FACTS: Each claimant has established and holds seniority rights in the B&B helper's class and is regularly employed as a B&B Helper (cook). The claimants' names were properly listed on all the B&B helper's rosters posted subsequent to their date of employment, until the Carrier posted the July 1, 1963 roster.

The pertinent portions of the April 1, 1963 B&B helper's roster reads:

"No.	Name	Occupation	Gang	Carp. Date	Helper Date	Ld. Carp. Date
		* * * * *				
72	McNair, A. H. Mrs.	Helper (Cook)	9		7-1-53	
73	Day, L. M. Mrs.	Helper (Cook)	11		5-5-54	
74	Fricke, E. M. Mrs.	Helper (Cook)	10		10-22-56	
76	Johnson, D. L.	Helper (Cook)	2		11-21-62"	
		* * * * *				

In our discussion with Petitioner's representative on this property over the last few years with regard to the subject matter of this dispute, Respondent Carrier's representative has consistently maintained the position that first and foremost, Petitioner is not the duly designated bargaining agent for the class or craft of cooks on this property and, therefore, has no status to negotiate in behalf of claimants; and, secondly, in any event, there are good and sufficient reasons why these ladies should not be permitted to acquire a seniority date which would carry with it the right to use their seniority to displace from one boarding crew to another.

It was pointed out, for instance, that unlike the various classifications of work which are contemplated by the Maintenance of Way Agreement and which are performed by the various classes of employees covered by that agreement, cooking is in the nature of a personal service. That is to say, a lady whose cooking might satisfy one group of employees under the co-operative boarding arrangement might not prepare food to the liking of another group; and when a particular cook was satisfactorily performing this personal service for one of the crews, it would be highly undesirable to subject her to being displaced, which might and probably would cause dissatisfaction within the crew.

A further complication is the fact that the lady cook for each of these co-operative boarding crews is usually the wife of the foreman, or one of the carpenters in the crew; that if she was not in that status when she started as cook with the crew, she generally acquired that status before very long, and, of course, any provision that would then permit her to be displaced as cook would present additional personnel problems within the crew, which would likely be extremely difficult or impossible to adjust satisfactorily.

Be that as it may, however, there is absolutely no provision in the Maintenance of Way Schedule on this property that entitles these lady cooks to a seniority date as either cook or B&B Helper, and your Board is respectfully requested to deny the claim of Petitioner in its entirety.

OPINION OF BOARD: After hiring each of the Claimants to perform cooking duties for co-operative boarding B&B gangs, Carrier listed Claimants as "Helper (Cook)" on the B&B Helper seniority rosters it issued over a period of almost ten years, until the protested change on the July 1, 1963, roster.

Carrier argues that only individuals who have performed service in the classification B&B Helper are entitled to have their names included in the roster of B&B Helpers, that the Claimants never performed service in the Helper classification as defined in Rule 40, and that the craft "cook" is not covered by the Agreement. Rule 40 in its pertinent part reads:

"Helper — An employe assigned to assist carpenters shall be classified as a B&B Helper."

No further detail of the duties of B&B Helper are supplied in Rule 40. However, in Appendix B of the Agreement, headed "Relative To Board And Lodging For Floating Crews", there is the following:

". . . the Company put to no expense . . . except that not to exceed eight (8) hours time of one helper per day . . . is to be permitted for use in the care of and operation of such camp cars . . ."

We conclude from this that among other duties which might be required of B&B Helper is to cook and otherwise care for and operate camp cars for the co-operative boarding crews. This conclusion is confirmed by the fact established in the record that prior to the hiring of Claimants to do the cooking, B&B Helpers had been so assigned. The fact that cooking may itself be considered a craft does not change the fact established in this record that acting as cook for co-operative boarding crews was a function which could be and was required of occupants of the classification "B&B Helper."

Carriers continued to list Claimants on the seniority rosters as B&B Helpers after Carrier tried unsuccessfully in 1961 to get the Organization to agree that they were not B&B Helpers; this further supports the conclusion that under this Agreement Claimants' duties in the care and operation of the camp cars for the co-operative boarding crews was treated as part of the job of B&B Helper. Carrier violated the Agreement when it unilaterally removed Claimants' names from the B&B Helper Seniority Roster.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.