



**Award Number 17703**

**Docket Number DC-17882**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Louis Yagoda, Referee**

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 385 on the property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, for and on behalf of WALTER READUS and all other Buffet Attendants similarly situated; GEORGE KEYS and all other Chef Cooks similarly situated, that:

- 1) All Buffet Attendants assigned to Carrier's Trains Nos. 9 and 24 be paid the difference between the rate of pay for Buffet Attendants and the rate of pay for Chef for all hours accumulated on said trains, and
- 2) all such Chefs be paid for all hours accumulated by Buffet Attendants on Carrier's Trains 9-24,

account of Carrier requiring Buffet Attendants to cook on said trains since September 1967 in violation of the agreement between the parties.

**EMPLOYEES' STATEMENT OF FACTS:** Claimants are Chef Cooks and Buffet Attendants, respectively, employed by carrier in its dining car department. Carrier assigned to its dining and buffet cars in the consist of its trains 9 and 24 buffet attendants. On occasions these attendants would be given helpers, but for the most part they worked alone.

Effective with its Bulletin No. 7-58 (Employees Exhibit "A"), carrier instituted a new breakfast and buffet service on the trains in question and issued new menus to cover same (Employees' Exhibit "B"). Under this "new" service attendants, as the above-mentioned Exhibits show, were required to cook. Employees, as a consequence, filed time claims alleging a Scope Rule violation by carrier, in letter dated October 6, 1967 (Employees' Exhibit "C").

Carrier's Superintendent, Sleeping and Dining Car Department, denied the claim under date of October 13, 1967 (Employees Exhibit "D"). Appeal was made to carrier's Vice-President, Labor Relations, on October 20, 1967, who, in letter dated December 8, 1967 (Employees' Exhibits "D" and "F"), denied the appeal. On January 17, 1967, Employees advised carrier that it was submitting the dispute to your Board for a determination (Employees' Exhibit "G"). Conference was held at each stage of handling.

(Exhibits Not Reproduced)

**CARRIER'S STATEMENT OF FACTS:** Prior to September 29, 1967, the consist of Trains Nos. 9 and 24 included a bar lounge car in charge of a Buffet Attendant.

Said bar lounge cars do not contain a kitchen, but instead there is an area designated as a buffet pantry which is equipped with a steam table, steam coffee urn and electric toasters.

Attached hereto as Carrier's Exhibits "A" and "B" are copies of the menus in effect on Trains Nos. 9 and 24 respectively prior to September 29, 1967.

On or about September 29, 1967, the Carrier added one (1) item to the menus of Trains Nos. 9 and 24, i.e., minced ham and scrambled eggs.

Other than the addition of the aforementioned one (1) item to the menus there were no other changes made in connection with Trains Nos. 9 and 24.

Attached hereto as Carrier's Exhibits "C" and "D" are copies of the new menus placed in effect on Trains Nos. 9 and 24 respectively on or about September 29, 1967.

A comparison of Carrier's Exhibits "A" and "B" (copies of menus in effect on Trains Nos. 9 and 24 respectively prior to September 29, 1967) with Carrier's Exhibits "C" and "D" (copies of menus in effect on Trains Nos. 9 and 24 respectively subsequent to September 29, 1967) will readily and clearly reveal that the only change in connection therewith was the addition of the item "minced ham and scrambled eggs".

Attached hereto as Carrier's Exhibit "E" is a copy of Bulletin No. 7-58 to Buffet Attendants—Trains #9 and #24 issued by Mr. W. R. Jones, Superintendent, Sleeping and Dining Car Department, under date of September 29, 1967.

Also attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Vice President-  
Labor Relations, to Mr. E. Monroe, General Chairman,  
under date of December 8, 1967 ..... Carrier's Exhibit "F"

Letter written by Mr. Amour to Mr. Monroe under  
date of February 19, 1968 ..... Carrier's Exhibit "G"

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Prior to September 9, 1967, the consist of Carrier's trains Nos. 9 and 24 included a bar lounge car in charge of a Buffet Attendant. Said bar lounge cars did not contain a kitchen, but instead there was an area designated as a buffet pantry which was equipped with a steam table, steam coffee urn and electric toasters. On or about September 29, 1967, the Carrier added one (1) item to the menus of trains Nos. 9 and 24 i.e. minced ham and scrambled eggs. This item was the only addition to the prior menu. The preparation of these eggs was required of the Buffet Attendant. The employees alleged that this constituted a violation of their Scope Rule and that the preparation of scrambled eggs could only be prepared, properly by a chef. The Carrier denied the claim on the ground that (1) the Scope Rule was general in nature, merely listed positions, and did not

describe work and (2) that other than chefs, i.e. buffet attendants, had, for many years, prepared scrambled eggs on Carrier's passenger trains.

In consideration of this claim we find that the Scope Rule, cited by the employes is a broad, general rule which only lists positions and does not describe the work to be performed. We must therefore in conjunction with the numerous precedents established by the 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 claimed. The record does not reveal that degree or amount of probative evidence requisite for a sustaining award. We will deny the claim.

**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 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.

#### A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.