NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

PROTECTIVE ORDER OF DINING CAR WAITERS, LOCAL #465, AMERICAN FEDERATION OF LABOR

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Petitioner, Protective Order of Dining Car Waiters, Local #465, American Federation of Labor, claims that:—

"1. Waiter Chester A. Foote should be reimbursed in the sum of twenty-one Dollars and sixty-two ($21.62) cents, because of the company's failure to pay him for time to lay-over terminal, during the period beginning August 11, 1935, and ending May 18, 1936, in accordance with Article IV of the agreement between petitioner and the respondent company.

"2. Waiter Foote has been denied his right to seniority as a waiter-in-charge, in violation of Articles I, II, VII, and VIII of the Agreement between the petitioner and the respondent company; the said denial having been brought about by the respondent company's institution of a newly created position of head-waiter, which requires the same duties as that of waiter-in-charge, and which is being filled by persons outside the scope of the agreement."

POSITION OF EMPLOYES.—

ITEM 1. Chester A. Foote was regularly assigned in Dining Car and Hotel Department Service as a waiter with "lay-over terminal" at Ogden, Utah, during the period Aug. 11, 1935, to May 18, 1936, inc., involving thirty-three trips; his time was not computed to the "lay-over terminal" (Ogden) but was computed two hours and twenty-five minutes short of the terminal on each trip. Under Article 4 of the agreement reading:

"ARTICLE 4—COMPUTING SERVICE

"Time will be counted as continuous for each trip from time required to report for duty until released from duty at lay-over terminal, set-out or turn-around point, subject to deductions of eight hours for sleep each night."

Waiter Foote is entitled to pay for time to the "lay-over terminal" on each trip made by him during this period and the practice of the Company in cutting off his pay two hours and twenty-five minutes prior to his arrival at the lay-over terminal is in violation of the plain terms of the agreement.

ITEM 2. The employees contend that under the provisions of the current agreement, particularly Articles 1, 2, 7, and 8, Waiter Foote is entitled to the "newly created position of head waiter," Ogden District, which is identical to that listed in Article 1 of the Agreement as "Waiters-in-Charge" and that the requirements of this position are the same in every respect as those of a waiter-in-charge and which re-named position the carrier has filled by assignment of persons outside the scope of the agreement.

The carrier, in refusing to assign Waiter Foote to the re-named position of head-waiter, was depriving this waiter of his seniority rights as set forth in Article 7; further, the carrier is attempting to deprive the employes of the provisions of Article 8 by re-classifying work of a position designated in the agree-

ment as waiter-in-charge by a new title, that of head waiter, and by so doing is attempting to remove this newly-named position from the application of the agreement.

The carrier has, on prior occasions, promoted waiters to the position of waiter-in-charge, referring particularly to the promotion of George Causey, June 17, 1932, and the assignment of Waiter Foote to the position of waiter-in-charge July 11, 1935. The claimant in this case was competent and well qualified, because of his many years of service as a waiter and his previous temporary assignment as waiter-in-charge, to fill the position contended for from the standpoints of both his ability and his seniority.

POSITION OF CARRIER.—

ITEM 1. Check of the claim shows it covers the period August 11, 1935, to May 16, 1936, instead of May 18th as indicated in claim presented to the Board. Waiters are paid on basis of time slips prepared and certified by stewards covering the dining car crew. Waiter Foote was paid for time on duty as reported by the stewards in charge of the dining cars on which he worked during the period. Payments were strictly in accordance with the rules of the agreement. This claim is an attempt to expand the rules of the agreement to contemplate payments not provided for in the rules. Discussion in conference clearly indicated that the submission was designed to secure a modification in Article 4 of the agreement. This article has always been applied to provide for payment from time required to report for duty until released from duty; it does not contemplate payment beyond the release period on the road. It is the desire of dining car crews to be released as soon as service conditions will permit. Generally they are released from duty at 9:30 P. M. Dining car crews are not paid for time on the road as in the case of train and enginemen who are on duty in the operation of the trains; dining car crews are paid for operating restaurants on trains and work performed in connection with the service for which they are employed. Normally, dining car crews are released from duty at 9:30 P. M., and with the exception of four instances during the period named Waiter Foote was released at 9:30 P. M. The four exceptions with the additional time allowance paid after 9:30 P. M. were as follows:

August 11, 1935, 2 hours, 30 min.
August 12, 1935, 1 hour.
January 4, 1936, 2 hours, 30 min.
January 5, 1936, 2 hours.

Foote was paid in these instances because he was not released from duty until the time indicated after 9:30 P. M. In every other instance he was paid until released at 9:30 P. M.

Article 4 is not a terminal to terminal proposition. Dining car crews operate from Chicago to the Pacific Coast and return with appropriate layover in connection with 240 hours service per month. The interpretation claimed by Local 465 would contemplate continuous time on road whether on duty or not. This is not in accordance with the practice on this or any other railroad in connection with dining car operations.

ITEM 2. To the best of the carrier's knowledge, this pertains to a claim described as follows:

> "The Chester A. Foote case is a claim that Waiter Chester A. Foote, employed out of Ogden Commissary should be appointed waiter-in-charge on cafe-observation cars such as run between Salt Lake City and Butte, and on trains 21 and 14 between Portland and Green River, basing claim on seniority as waiter-in-charge, which the Waiters' Organization claim Foote established when temporarily employed as waiter-in-charge on the Challenger from July 11th to July 15th, 1935, when stewards were placed on Challenger diners."

Article 7 contemplates adherence to the general principle of seniority. It is the only seniority provision in the agreement. Adherence to the principle of seniority in accordance with this article is obviously limited to positions included within the scope of the waiters' agreement. The positions referred to are not positions of "waiters-in-charge" of the type included within the scope of the agreement with the Protective Order of Dining Car Waiters. The positions referred to on the cafe-observation cars on run between Salt Lake City and Butte, and trains 21 and 14 between Portland and Green River are positions of the nature of assistant steward, classified as head waiters and filled by

white men. The positions on the Salt Lake City-Butte run and trains 21 and 14 between Portland and Green River were established in December 1932 almost three years before the effective date of the agreement with Protective Order of Dining Car Waiters (August 1, 1935). These positions are filled by white employes in training for positions of stewards, or by stewards displaced from their positions by reduction in force.

Foote, however, would not under any seniority provisions of the Waiters' Agreement be entitled to position of waiter-in-charge of the nature that is included under the agreement with Protective Order of Dining Car Waiters. All of the provisions of the agreement pertaining to seniority are included in Article 7. Foote claims that he established seniority as a waiter-in-charge in connection with four days' temporary employment July 11th to July 15, 1935, as waiter-in-charge on the Challenger pending the assignment of stewards. The selection of waiters for positions of waiters-in-charge that are included within the scope of the agreement with the Protective Order of Dining Car Waiters is a matter for the management, but if the agreement did contain seniority provisions that would support the claim, Foote could not, with seniority in the Ogden District, exercise it to runs not included within that district. There is no run in the Ogden District with position of waiter-in-charge of the nature included under the agreement with the Waiters Local. The Portland-Green River run, which likewise does not have a waiter-in-charge of the nature included within the agreement with the Waiters Local, is remote from the Ogden District.

This claim and submission is designed to secure an expansion of the scope of the agreement effective August 1, 1935, to include white head waiters, or in effect require the substitution of colored men for the white men assigned to positions of head waiters on certain runs where, in the judgment of the management, the positions are properly filled by white men.

OPINION OF BOARD.—ITEM 1. That Article 4 contemplates only pay for service until released from duty.

ITEM 2. The evidence does not indicate that the carrier has established a "* * * newly created position of head waiter * * *" as claimed by the employes. On the contrary, the carrier stated and it is not denied by the employes that the positions of head waiters referred to on the cafe-observation cars in run between Salt Lake City and Butte and trains 21 and 14 between Portland and Green River were established in December 1932 almost three years before the effective date of the agreement with the Order of Dining Car Waiters dated August 1, 1935. The positions of head waiters, on these runs as well as other runs are and have always been filled by the white men in training for stewards or by stewards displaced from their positions by reduction in force.

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 employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

This Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That;

ITEM 1. Waiter Foote was properly compensated.

ITEM 2. Inasmuch as the agreement August 1, 1935, did not include the positions of "Head Waiters" there is no violation of present agreement and it is not within the authority of this Board to extend the scope of the agreement.

AWARD

Item 1—Claim denied.
Item 2—Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary.

Dated at Chicago, Illinois, this 7th day of April, 1937.