

NATIONAL RAILROAD ADJUSTMENT BOARD  
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN  
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Ex parte submission of Brotherhood of Railroad Trainmen, Southern Pacific (Pacific Lines) requesting that the position of Cafe Car Steward trains Nos. 50 and 53 be bulletined for seniority choice and a steward assigned thereto; also Steward or Stewards losing time through this failure, be fully compensated therefor."

EMPLOYEES' STATEMENT OF FACTS.—

"Trains Nos. 50 and 53 operate between Oakland Pier and Fresno, the consist including a 'Cafe Car.' An employee other than a designated Steward from the Stewards' seniority roster is in charge of the car; this despite the several requests of the B. of R. T. on this property for placement of a Steward thereon. This employee, other than Steward, works as follows:

"CAFE CAR

Days	Train	Station	Report	Leave	Station	Arrive	Released	Hours
1-1	50	Oakland..	4:00 p	5:05 p	Fresno....	10:10 p	9:30 p	5:30
2-2	53	Fresno....	5:30 a	2:50 a	Oakland..	8:20 a	8:30 a	3:00
Total..								8:30

"Regular Crew—26 trips per month.

"Relief Crew—4 trips per month."

CARRIER'S STATEMENT OF FACTS.—

"It is and has been the practice of the Carrier, for many years, to assign a waiter-in-charge to a cafe car operating in a run where the volume of traffic is normally insufficient to justify the assignment of more than one or two employees, including a waiter-in-charge to perform the duties and responsibilities involved in the handling of the dining room section of said car; and, on the other hand, it is and has been the practice to assign a cafe car steward to a cafe car operating on a run where the volume of traffic is normally sufficient to justify the employment of more than two employees to perform the duties and responsibilities involved in the handling of the dining room section of such car.

"The assignment in question involves the operation of cafe coach No. 10300, which ran daily from Oakland, California, to Fresno, California, in Train No. 50, and from Fresno to Oakland in Train No. 53, from February 2, 1936 (on which date the run was established), until December 13, 1936. Effective December 13, 1936, said car has operated from Oakland to Fresno in Train No. 50, and from Fresno to Oakland in Train No. 55. Dinner is served in Train No. 50 enroute, Oakland to Fresno, and breakfast and luncheon are served in Train No. 55 enroute, Fresno to Oakland (breakfast only was served between Fresno and Oakland when this car operated in Train No. 53). During the year 1936 this car served an average of 11.5 patrons per day for dinner in Train No. 50, and 3.4 patrons per day for breakfast in Train No. 53. During the period January 1 to February 15, 1937, an average of 11.5 patrons per day were served for dinner in Train No. 50, and average of 2.4 for breakfast and 3.7 for luncheon were served in Train No. 55.

of January 28, 1936. The Board will again please observe that said agreement does not contain a scope rule.

"Waiters-in-charge are represented by the Dining Car Cooks and Waiters Union, and as evidence of such fact we are submitting a copy of a mediation agreement signed on April 4, 1929, by representatives of said Cooks and Waiters Union, the Southern Pacific Company, and the U. S. Board of Mediation, such agreement being known as 'Mediation Agreement (Case 379).'

"If an award is made granting the request of the Petitioner, it will require the Carrier to abolish positions designated as waiter-in-charge, and, furthermore, it would result in the assignment of one class of employees to perform service heretofore recognized as assignable to another class of employees, thus depriving one class of employees the right to assignments as reflected by the mediation agreement.

"The representative of the Cooks and Waiters Union has protested, to the Carrier, against any action being taken toward changing the existing plan whereby waiters-in-charge are placed in runs in accordance with existing policy, as described, and requests that his organization be given the privilege of presenting a brief and of giving oral testimony, in behalf of the class of employees who would be affected by such action, before any decision shall be reached. A photostatic copy of a written protest, dated August 5, 1936, is submitted as a part of this brief.

"The Carrier requests the Board to dismiss this case for lack of jurisdiction and to deny the request of the Petitioner on the following grounds:

"A. The existing agreement, effective July 1, 1936, between the Carrier and the Brotherhood of Railroad Trainmen, relating to pay and regulations of Dining Car and Cafe Car Stewards, does not abrogate the right of the Carrier to exercise an accepted practice of long standing wherein, under certain definite circumstances, a waiter-in-charge is assigned to a cafe car.

"B. The existing agreement is not in conflict with past practice, therefore said past practice is still legally in effect and not subject to change except under the procedure prescribed in Section 6 of the Amended Railway Labor Act.

"C. The existing agreement does not provide the conditions under which cafe car stewards shall be used; it merely prescribes the rate of pay applicable when cafe car stewards are used.

"D. The Carrier has entered into an agreement with the Dining Car Cooks and Waiters Union, representing employees on the Carrier's lines, whereby the position of waiter-in-charge is recognized and a definite rate of pay established; therefore, if the request of the Petitioner is granted, in the absence of the third party, namely, the Dining Car Cooks and Waiters Union, such action would result in impairment of the obligation of contract, and an award in favor of the Petitioner would have no legal force or effect, and could not legally be enforced by the Carrier."

**OPINION OF BOARD.**—The issue in this case involves the request of petitioner that a position of cafe car steward in Trains 50-53-55 be bulletined for seniority choice of stewards, and a steward assigned thereto, and for compensation for stewards not used in this service. The evidence of record does not sustain the claim of the employees in this case.

**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 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 of July 1, 1936, does not sustain the claim of the employees.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary.*

Dated at Chicago, Illinois, this 9th day of September, 1937.