

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Protest against the railway supplanting cafe car stewards with waiters who perform the work of 'stewards' and asking that bona-fide stewards be assigned to all cafe cars, as provided for by the contract between the Chicago, Rock Island & Pacific Railway Company and the dining and cafe car stewards, effective March 1, 1937.

"Also claim for all monetary losses sustained by stewards on account of waiters performing the work of stewards in violation of the contract governing the rates of pay and working rules of 'dining and cafe car stewards.' "

EMPLOYEES' STATEMENT OF FACTS: "The following is quoted from the first page of the agreement between the Chicago, Rock Island and Pacific Railway Co., and dining and cafe car stewards:

'AGREEMENT BETWEEN

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

and

DINING AND CAFE CAR STEWARDS

(Represented by The Brotherhood of Railroad Trainmen)

The following rates of pay and rules will govern the hours of service and working conditions of dining and cafe car stewards employed by this Railway:

ARTICLE 1. RATES OF PAY:	Per Month of 240 Hours	Per Hour Based on 240 Hours Per Month
DINING CAR STEWARDS:		
First year's service	\$153.20	\$.6383
Second " "	163.20	.68
Third " "	173.20	.7216
Fourth " "	183.20	.7633
Fifth year's service and over	188.20	.7842
CAFE CAR STEWARDS:		
First year's service	148.20	.6175
Second " "	153.20	.6383
Third year's service and over	158.20	.6592

hold and attract passenger business to our line. No one can be more concerned about rendering the proper service to our patrons than the officers of the dining car department, and it was for this very reason that in our schedule negotiations with the Brotherhood of Railroad Trainmen we pointed out that the work of dining car employees was not similar to the work of brakemen or conductors and that the officers of the carrier must, of necessity, have the right and authority to man dining car service in a manner which will, in the judgment of the carrier's officers, meet the requirements. The Superintendent of Dining Car Service on this property has been in dining car service for many years. He has had many years' service as a practical steward, and in any case where, in his judgment, a steward is necessary, such a position has been established. No stewards are required on the dinette and cafe cars involved in this case.

"The carrier asks that your Board deny the claim of the petitioner for the following reasons:

"1. (a) For an unbroken period of at least twenty-five years, under every wage order, decision and negotiated agreement in effect, the carrier has established position of waiter-in-charge of dining and cafe cars without protest previous to the instant case from any employe or organization.

"(b) The agreement negotiated effective March 1, 1937, between this carrier and the Brotherhood of Railroad Trainmen did not in any way change this accepted practice existing prior to that date, but, to the contrary, the present agreement in Article 7 (a) recognizes the practice and permits its continuance.

"(c) The existing agreement does not prescribe the conditions under which stewards shall be used. It merely prescribes rules and rates of pay which will be applicable 'where the Railway establishes position of steward'. The Railway Company is the judge of the necessity.

"(d) The carrier has not established a position of steward on cafe cars indicated herein for specified runs; therefore, the stewards' agreement does not apply to such runs.

"(e) It is not within the province of this Board to add to or take away language from an agreement made by the parties to the agreement. In this case it would be necessary to alter the agreement between the parties in order to support the contention of the petitioner. Compliance with the petitioner's claim would be to say that a rule (Article 7 (a)), which has been properly included in the contract through conference and negotiation, has no weight and should be disregarded, and in its stead a new rule granted requiring the carrier to place stewards on all dining and cafe cars.

"2. The carrier has an agreement with the Dining Car Cooks and Waiters' Union, Local 351, A. F. of L., wherein the position of waiter-in-charge is specifically provided for and a definite rate of pay for such positions established, and compliance with the request of the petitioner in this case would result in depriving members of the Dining Car Cooks and Waiters' Union (which organization has been certified to the carrier as the duly authorized representative of those employes acting as waiters-in-charge) of work to which they are entitled under their contract, and which they have performed for many years. The Dining Car Cooks and Waiters' Union is not a party to this dispute. Therefore, if the request of the petitioners is granted, in the absence of a third party, namely, the Dining Car Cooks and Waiters' Union, Local 351, A. F. of L., such action would result in the impairment of contract and an award in favor of the petitioners would have no legal force or effect and could not legally be enforced by the carrier."

OPINION OF BOARD: This case involves the same principles as are discussed at length in Award 779, Docket PC-698 ante and presents a diametrically opposite application of them.

The protest although phrased as against "supplanting" cafe car stewards with waiters, shows no such facts. On the contrary, the claim is scarcely veiled that waiters in charge of such cars shall be supplanted by stewards. And this is solely on the premise that it is claimed that the making of an agreement with stewards contemplating pay and regulations for them when they are in charge automatically operated to give them a grant to the exclusive performance of such service, this in the face of the fact that a definite effort was made in the course of negotiations to obtain such an agreement which was quite as definitely declined. The broad claim is utterly without merit and it seems unfortunate that meritorious principles should be attempted to be stretched so far.

The seniority rules do not operate extra-territorially; they cannot, as sacrosanct as they are, reach out to draw into and make part of the agreement work otherwise not subject to it; they are only co-extensive with it and operate only on such work, ascertained by other tests, as is subject to the agreement.

This decision, however, should not be construed as license to convert or assign work at will. As indicated in the opinion above mentioned, substitutions must be justified by the carrier.

The individual runs casually mentioned in this case are quite insufficiently described by the evidence to be passed upon. The broad claim is denied; this without prejudice to claims as to individual runs.

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 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 no violation of the agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1938.