Award No. 867
Docket No. DC-865

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Joint Council of Dining Car Employes Union that Dining Car Cooks, George F. Lewis, Wilfred Lynch, James Parks, and others similarly situated, be paid the rate of pay as set forth in the Carrier's letter of May 9th, 1938 (EXHIBIT 3) for the position of Grill and Cafeteria Car Attendant, and compensated retroactively for wage loss suffered since June 28th, 1938, the date upon which they placed bids with the Management for these positions."

EMPLOYES' STATEMENT OF FACTS: "Under date of December 16th, 1937, Dining Car Employes Union, Local No. 370, a chartered local of the Hotel and Restaurant Employes International Alliance and Bartenders International League of America and an affiliate of the Joint Council of Dining Car Employes Unions, filed application with the National Mediation Board, requesting an investigation and for that Board to certify the duly authorized representative of the Dining Service Employes, Stewards and Hostesses excepted, of the New York, New Haven, and Hartford Railroad Company. The application was received by the Board and docketed as case R. 429.

"While the case was before the Board, and prior to the investigation and election, the Carrier placed into service a new type of Dining Car which they named 'Grill' or 'Cafeteria' cars. Management then proceeded to ignore seniority rules then in existence and employed new persons to perform the duties of Cooks and Waiters on these new cars. As a result, several Dining Cars were replaced by Cafeteria Cars with an entirely new personnel while senior men in service were reduced to the Extra Board or furloughed from service.

"These employes considered that an injustice had been done them, and requested that relief be sought. Accordingly, a letter was addressed to the Secretary of the National Mediation Board and copy sent to the Superintendent of Dining Service of the New Haven Railroad Company. Full text of letter is attached and marked (EXHIBIT 1).

"The Board assigned Mediator Murray to investigate the dispute for representation and an election was held during the week of March 21, 1938, in which Chefs, Cooks, Waiters, Waitresses, Grill and Cafeteria Car Attendants, Countermen, Bar Attendants, Waiters-in-Charge, Dishwashers and Club Car Porters participated. On March 30, 1938, the National Mediation Board certified Dining Car Employes Union Local 370 as the duly authorized representative of the class and craft involved.

effective October 1, 1937, (Exhibit 'F'). It will be observed by our reply of May 31, 1938 (Exhibit 'L') that we have covered practically all of these features and that with the letter from Secretary Cole of the Mediation Board of June 6, 1938, Exhibit 'M,' that what we had started corresponded with the information available in the files of the National Mediation Board.

"It is our position that the certification of the National Mediation Board in Case R-429 made no changes in any existing agreements but merely in this case certified Dining Car Employes Union, Local 370, as representing certain specified groups of employes in the Dining Car Department and other than for such granting of the change in representation as this may have made, it did not and could not extend the coverage of a pre-existing agreement to include any employes or groups of employes not previously included therein and that an enlargement of the coverage of a pre-existing agreement could be made only through negotiations conducted pursuant to the provisions of Section 6 of the Railway Labor Act as amended.

"No request has been made by Dining Car Employes Union, Local 370, that an agreement be negotiated to cover the representation certified to them by the National Mediation Board in Case R-429, either as to

(a)—the Dining Car Cooks, Pantrymen and Waiters covered by the previous agreement with the Brotherhood of Dining Car Employes

(b)—the additional groups of employes certified as being represented by Dining Car Employes Union, Local 370, and who were not represented by the Brotherhood of Dining Car Employes.

Rather, the Dining Car Employes Union, Local 370, have chosen, in the guise of an alleged mis-application of the Agreement of March 29, 1929 and supplementary wage adjustment of October 1, 1937, negotiated with the Brotherhood of Dining Car Employes, to force into those agreements without negotiation conducted pursuant to Section 6 of the amended Railway Labor Act, groups of employes not specifically covered thereby. We hold that in view of all of the facts and circumstances as indicated, the Dining Car Employes Union, Local 370, has erred in presenting this matter to the National Railroad Adjustment Board, that the National Railroad Adjustment Board is without jurisdiction in the premises: that if Dining Car Employes Union, Local 370, wished to enlarge the scope of the existing agreement or to negotiate a new agreement to include all of the employes covered by the representation as certified to them, that Section 6 of the amended Railway Labor Act establishes the procedure through which such negotiations should be inaugurated and that for all of these reasons, the National Railroad Adjustment Board should dismiss the complaint."

OPINION OF BOARD: Shortly after the termination of Federal Control Carrier entered into an agreement with the Brotherhood of Dining Car Employes applicable to dining car cooks, pantrymen and waiters. The agreement was from time to time revised, the last revision becoming effective March 29, 1929.

Upon application duly made to it and after an election held pursuant to law, the National Mediation Board on March 30, 1938, certified Dining Car Employes Union, Local 370, as the duly authorized representative of the employes covered by the agreement of March 29, 1929, as well as other employes of Carrier engaged in dispensing food and drinks.

While the application for representation was pending before the National Mediation Board, Carrier placed in service a new type of dining car known as "Grill" or "Cafeteria" cars. The attendants on these cars were designated as grill and cafeteria car attendants, countermen and dishwashers. They are paid less than the wages specified in the agreement in effect between the parties for cooks, pantrymen and waiters who perform the same or similar work on dining cars. The question presented is whether these employes are

covered by the agreement of March 29, 1929, and entitled to the compensation therein fixed for cooks, pantrymen and waiters.

Due to ambiguity in the claim as presented, the Board properly inquired of the parties during oral hearing as to whether the question presented to the Board was the same as the question handled by the parties on the property; and to clear up this matter, the Brotherhood was requested to submit a clarification of the claim as submitted. This request was complied with and it leaves no doubt that the question presented is the same as the question handled on the property. The response filed by Carrier prior to hearing shows this to be true.

Carrier, relying upon Award No. 405, contends that the employes in question are not covered by the agreement in effect between the parties. The facts in the case decided by Award No. 405, however, were entirely different from the facts in this case. There, the Board found that the service in question was inaugurated at least six months before the agreement was negotiated but the employes engaged in said service were not covered by the agreement. In this case the contract was negotiated eight years before grill or cafeteria car service was inaugurated. The new type car fills the same purpose as did the old dining car and the employes in general perform the same work they performed on the old cars. The question presented here is in all respects the same as that decided in Award No. 864 and that opinion is held to be controlling in this case. The claim will be sustained.

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 Carrier violated the agreement in effect between the parties when it established a rate of pay for the employes in question lower than the wage scale specified in said agreement for employes performing the same or similar work.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1939.