Award No. 868
Docket No. DC-866

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 the Joint Council of Dining Car Employes Union for and in behalf of Dining Car Employes Union Local No. 370 that waitresses Lulu B. Peters, F. Ezulda Dorsey and others similarly situated, be paid the rates in effect and compensated retroactively for wage loss suffered since the date the claim was filed with the management."

EMPLOYES' STATEMENT OF FACTS: "During the week of March 21, 1938, following the conduction of an election by the National Mediation Board in which Chefs, Cooks, Waiters, Waitresses, Grill and Cafeteria Car Attendants, Countermen, Bar Attendants, Waiters-in-Charge, Dishwashers, and Club Car Porters, participated, the National Mediation Board certified the Dining Car Employes Union, Local 370, as the duly authorized representative of the class or craft of employes involved.

"On April 21, 1938 (EXHIBIT 1) a request was written to the management for copies of the schedule of regulations and their memoranda under which dining service employes (stewards and hostesses excepted) were presently working. In reply, under date of May 9, Mr. E. B. Perry for the company wrote in part:

> 'The other employes covered by the certification are not covered by any agreements. Their present rate of pay is as follows: Waitresses—$11.11 per week, they work five (5) days per week; Dining Car Attendants—$4.75 per day: Grill and Cafeteria Car Attendants—$4.44 per day: Club Car Porters $21.00 per week.'

"On May 21, the union again addressed the management (EXHIBIT 2) requesting a clarification from the management as to whether the management in the reply of May 9 meant to convey to the Local that any other agreement or memoranda existed covering these employes than the schedule of regulations of rates of pay in existence under the agreement executed March 29, 1929; and requesting information as to how rates of pay for waitresses and other categories of employes alleged not to be covered by any agreement was arrived at, in light of the responsibilities placed upon both the management and employes under the Railway Labor Act 'to exert every effort to make and maintain written agreements pertaining to wages, hours, and conditions of employment.'

"The management replied to the letter of May 21 on the 24th (EXHIBIT 3) evading the main questions raised in the letter of May 21 from the Local Union. On July 19, 1938 the Local formally charged the Company with arbi-

in July 1933 by which it was recognized that they were not covered by the agreement between the carrier and the Brotherhood of Dining Car Employes and which understanding is further confirmed by the fact that they were in no way mentioned in or covered by the wage adjustment of October 1, 1937, and which wage adjustment included all of the employes represented by the Brotherhood of Dining Car Employes.

"The complaint of the Dining Car Employes' Union, Local No. 370, is in effect nothing more than a request that the National Railroad Adjustment Board undertake to revise the existing agreement through enlarging its scope to include a group of employes (in this case, Dining Car Waitresses) not included in the existing agreement. The carrier holds that the request of the employes is without the jurisdiction of the National Railroad Adjustment Board; that the mere inclusion of Waitresses within the representation certification by the National Mediation Board in no manner whatsoever changes or enlarges the scope of the existing agreement and that such certification can and does make no change other than to alter existing representation or to establish representation where previously non-existent. It is the further position of the carrier that if Dining Car Employes' Union desires to negotiate an agreement covering the rates of pay and working conditions of Dining Car Waitresses, that the avenue of procedure necessary to the inauguration of such negotiations is provided for in Section 6 of the Railway Labor Act as amended. For all of these reasons the carrier requests the National Adjustment Board deny jurisdiction in this case and dismiss it forthwith."

OPINION OF BOARD: The facts as to representation and effective date of the agreement between the parties are the same in this case as set out in Docket DC-865, Award **867,** and will not be repeated here.

In the early part of 1933 carrier inaugurated a daily, except Sunday, round trip dining car service between Springfield, Mass., and New York, N. Y. Colored waitresses were used in the dining cars. All the states through which this service is operated prohibit working women employes more than five days per week and Carrier complied with these laws in its operation of this service. Carrier established a rate of pay for these waitresses lower than the rates specified in the agreement in effect between the parties for such work.

Carrier makes no serious defense of its action beyond the statement that when the service was inaugurated waitresses were employed pursuant to an agreement between the then duly constituted representatives of the employes and carrier that the employes in question would be excepted from the Agreement. The difficulty which now confronts Carrier lies in the fact that it is unable to produce written evidence of the agreement, the new employe representative denies its existence and refuses to negotiate an agreement that will permit the continued employment of the waitresses in question upon terms satisfactory to the Carrier.

Upon the facts of record the Board is powerless to do anything other than sustain the claim. No back compensation is requested beyond the date claim was filed and none is allowed.

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 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 carrier violated the agreement by attempting to remove the work from the agreement and assigning to other employes in order to reduce the rate of pay.

AWARD

The claim is 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.