

Award No. 1073

Docket No. DC-1059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY

**STATEMENT OF CLAIM:** "Claim for wages lost retroactive to June 1, 1937, for Percy J. Hines, Brooks Hays and others similarly situated as a result of management's changing the classification of waiter-in-charge or head waiter to sleeper-buffet porter and reducing the rate of pay from \$85 to \$100 per month for waiters-in-charge or head waiters to \$75 per month for sleeper-buffet porters."

**EMPLOYEES' STATEMENT OF FACTS:** "Sometime prior to June 1, 1937, the carrier employed waiters-in-charge or head waiters on Memphis-Pensacola trains 223, 207, 208, 108 at a rate of pay for this classification of employment of from \$85 to \$100 per month depending upon the seniority of employes in the position. On or about June 1, 1937, the management changed the classification of these positions to that of Sleeper-Buffer Porters, at \$75.00 per month assigning Percy Hines, Brooks Hays and others to these jobs under the new classification and at the reduced rates. Attempts have been made since June, 1937 to get the management to pay the employes the rate of pay of waiter-in-charge workers on these trains. On January 1, 1938, a flat rate of \$100 per month for waiters-in-charge was negotiated and made effective as of that date. On February 1, 1939 the carrier put back into effect the rates for waiter-in-charge but would not pay the employes for the time lost since June, 1937."

**POSITION OF EMPLOYEES:** "The claimants call the Board's attention to Rule 1 (a):

"The following rules will govern the hours of service and working conditions of dining car chefs, cafe car chefs, cooks, waiters-in-charge, snack car attendants, waiters, bus waiters and lounge car attendants, employed on dining cars, cafe cars, snack cars and lounge cars."

"The claimants also call the Board's attention to Rule 8 (a):

Position	1 to 3 Yrs. Inc.	After 3 Yrs.	After 5 Yrs.	After 8 Yrs.	After 10 Yrs.
Chef	\$120	\$125	\$135	\$145	\$155
Chef Cafe Car	110	115	120	125	125
Second Cook	80	90	100	100	100
Third Cook	60	60	60	60	60
Fourth Cook	50	50	50	50	50
*Waiters-in-charge	85	95	100	100	100
Waiter	55	60	65	65	65
Snack Car Attendant	80	85	90	90	90
Lounge Car Attendant	65	65	65	65	65
Bus Waiter	40	40	40	40	40
*Waiters in charge effective Jan. 11, 1938	100	100	100	100	100

these proposals, which was done Feb. 9, 1938. These proposals the employees submitted contained no reference to positions in question, on the combination coach-buffet-sleeping cars.

"Again, on August 8, 1938 General Chairman Weston wrote Mr. H. L. Worman, Chief Operating Officer concerning some specific grievances and this listing of complaints contained no reference to the position of attendants on the coach-buffet-sleeping cars.

"It is our contention neither the wording of the scope rules of Agreement nor the spirit and intent of same contemplate including attendants on the combination coach-buffet-sleeping cars in question, in this agreement. That the Management was entirely within its rights in not putting them under the Agreement on requests received subsequent to June 1, 1937. That employees' request that such positions be classified and paid as waiters-in-charge for the period June 1, 1937 to Jan. 31, 1939, is not supported by the Agreement.

"This position, we feel, is supported by Award 405 of the National Railroad Adjustment Board, Third Division.

"As a matter of information, the business on these cars and on trains 207-208, is normally exceedingly light and to show what it actually amounted to in the months of December, 1938 and January 1939, we are attaching hereto statement showing number of sleeping car passengers accommodated number meals served, meal revenue, locker revenue and total revenue from food service for these months.

"When these cars were placed in service the attendants were recruited from dining car service employees and for that reason after the Agreement June 1, 1937 was signed, they continued their seniority on positions formerly held covered by the Agreement. We consider this proper under Rule 5 (a), quoted in the Statement of Facts."

**OPINION OF BOARD:** This claim for wages lost between June 1, 1937 and February 1, 1939 is based upon an alleged violation of the governing rules of the Agreement of June 1, 1937 during that period. It appears that the wages specified for waiters-in-charge in that Agreement were \$85 to \$100 per month, with a flat rate of \$100 per month subsequently established as of January 1, 1938, and that the employees on whose behalf this claim is made were classified as sleeper-buffet porters and were paid \$75 per month. Since it is acknowledged by the employees that sleeper-buffet porters are not included within the scope of the Agreement, the claim can legitimately be held to be a valid one only if the sleeper-buffet porters were in fact performing the work of waiters-in-charge, and if, in addition, waiters-in-charge in coach-buffet-sleeping cars were covered by the Agreement. It must be conceded that a portion of the work of these employees was that of waiters-in-charge, although they also performed porter duties not commonly assigned to waiters-in-charge. In such a situation they might be entitled to the wages of waiters-in-charge, in the absence of offsetting circumstances, but only when, in such a case, the scope rule of the Agreement, by its terms, is applicable to all waiters-in-charge without limitation, and hence includes the positions in question. In this case, however, the scope rule of the Agreement expressly embraced waiters-in-charge, along with other enumerated classes of employees, "employed on dining cars, cafe cars, snack cars and lounge cars." The service of sleeper-buffet porters on combination coach-buffet-sleeping cars had been established early in 1935, more than two years prior to the negotiation of the prevailing Agreement. While there is a conflict of evidence as to whether these positions were expressly discussed by the parties at the time of the negotiation of the Agreement and were deliberately excluded, there can be no question that the scope rule as actually adopted unequivocally confined the rules of the Agreement to waiters-in-charge employed on the specifically enumerated types of cars, which did not include coach-buffet-sleeping cars. Under these

circumstances the inclusion of waiters-in-charge on these coach-buffet-sleeping cars could only result from further negotiation. Such negotiation did take place, and as of February 1, 1939, the carrier agreed to classify employees in charge of these coach-buffet-sleeping cars as waiters-in-charge and to pay them the flat rate of \$100 per month established for these positions on January 1, 1938. But between June 1, 1937 and February 1, 1939, these positions, then classified as sleeper-buffet porters, were not suubject to the Agreement, and hence there is no basis for the claim of wages lost as a result of the alleged violation of the Agreement.

**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 evidence of record does not disclose any violation of the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 10th day of May, 1940.