

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN RAILWAY COMPANY

**STATEMENT OF CLAIM:** "Complaint Dining Car Stewards on Southern Railway, Lines West, that men from dining car steward's ranks be placed in charge of dining car on trains Nos. 43 and 44 operating over Alabama Great Southern and New Orleans and Northeastern from Chattanooga, Tennessee, to meeting point."

**EMPLOYES' STATEMENT OF FACTS:** "Train No. 43, operating between Cincinnati, Ohio, and New Orleans, Louisiana, over Cincinnati, New Orleans & Texas Pacific Railway Cincinnati to Chattanooga, Tennessee, over Alabama Great Southern Railway Chattanooga to Meridian, Mississippi, and over New Orleans & Northeastern Railroad Meridian to New Orleans; picks up a dining car at Chattanooga each day, leaving Chattanooga at 3:05 A. M., which diner is handled on that train to the meeting point with train No. 44 on New Orleans & Northeastern, which meeting point at present is Hawks, Mississippi, an intermediate point approximately 51 miles south of Meridian and 348 miles south of Chattanooga. At meeting point the dining car is switched from train 43 to train 44 and handled by that train on the northbound movement, arriving Chattanooga at 10:00 P. M. on same date of departure from that point."

"Going south from Chattanooga this dining car serves breakfast and lunch to the meeting point, where the train arrives around 1:00 P. M., and on northbound movement they continue to serve lunch and serve dinner."

"Prior to the month of March, 1933, dining car stewards were assigned to dining cars on trains 43 and 44 operating all the way to New Orleans. During the month of March, 1933, stewards were dispensed with, one dining car assigned to the runs and negro waiters placed in charge of this car contrary to and in violation of Dining Car Steward's Agreement, revised June 1, 1927."

"The Brotherhood of Railroad Trainmen took over the Dining Car Steward's Agreement, February 1, 1936, the only change being the language in the caption to read: 'Dining Car Stewards as Represented by the Brotherhood of Railroad Trainmen.'"

**POSITION OF EMPLOYES:** "Rule 1, Dining Car Schedule, provides:

"The following rules will govern the hours of service, working conditions and rates of pay of dining car stewards."

"Rule 2, provides:

**'Rates of Pay and Lodging at Away from Home Terminal:**

From date of entry into service until end of twelve months thereafter \$145.61

With this exception, the contract is to remain in effect as at present in accordance with its terms.

'In response to your inquiry as to how matters of mutual interest should be handled, I advise you that in cases of grievance or matters involving claims, if the man is dissatisfied with the decision given him by the Superintendent Dining Cars and desires to turn the claim over to a brotherhood officer for handling, such matter should then be handled by the General Chairman, or his representative, with the proper Superintendent Dining Cars, i. e., J. D. Crow, Charlotte, North Carolina, or E. L. Kopp, Chattanooga, Tennessee, as the case may be. Failing of adjustment, the brotherhood officer handling the case should appeal to Mr. W. F. Kusch, Manager Dining Cars, Washington, D. C., and if further appeal be desired the matter should be handled with Mr. F. A. Coile, Personnel Officer, Washington, D. C., whose decision, so far as this company is concerned, will be final.

'With respect to matters relating to interpretation of or changes in Schedule of Wages and Working Conditions, they should be handled directly with the undersigned.

'I am returning a part of your file. I have corrected in pencil the list you attached to show the forty-three employees now in service.'

The stipulations contained in this letter were accepted by former General Chairman Deakins, who was succeeded by General Chairman Roberts, in a letter dated January 28, 1936, reading—

'This will acknowledge receipt of your letter of January 24th 1936 relative to our joint letter of January 13th and exchange correspondence on the transfer of jurisdiction of Dining Car Stewards, Southern Railway Company to the Brotherhood of Railroad Trainmen.

'Your joint letter of January 24th addressed to John F. Scott, General Chairman and the undersigned transferring the representation of Dining Car Stewards to the Brotherhood of Railroad Trainmen effective February 1st with the outline of procedure of handling grievance matters is accepted by our Committee and will be governed accordingly in all matters.'

'It will be noted that one of the stipulations contained in Mr. Mackay's letter of January 24, 1936, was that with the exception of the change in representation 'the contract is to remain in effect as at present in accordance with its terms,' and that this stipulation was accepted by the General Chairman. In other words, the agreement with the Dining Car Stewards was transferred to the Brotherhood of Railroad Trainmen without change, and this transfer carried with it the interpretations previously placed upon the agreement through understanding and practice.

'The Carrier respectfully insists that the agreement as interpreted over a long period of time prior to its transfer to the Brotherhood of Railroad Trainmen on February 1, 1936, did not require the use of Stewards on all dining cars and that it can not now require their use.

'On basis of the facts in the case, the claim should be dismissed and the complaint and request should be denied, and the Carrier requests that the Board so decide.'

**OPINION OF BOARD:** The Carrier's broad contention that the agreement, lacking an express provision, does not guarantee stewards any work cannot be sustained. CF. First Division Awards Nos. 351 and 2171, Third Division Awards Nos. 615 and 779. The applicable rule is stated in Award 779 of this division. We restate that rule here as follows: By implication of law, and in the absence of limitation, the agreement covers all the work of

the kind involved (stewards); any limitation claimed, not expressed in writing in the scope rule or otherwise, must be definitely proved both as to fact and extent.

There is no express limitation contained in the agreement. The question presented by this record then is whether the carrier definitely proved both as to fact and extent a limitation to its obligation under the agreement to assign to stewards all steward's work. That the work on trains 43 and 44 falls within the category of steward's work is not disputed. The limitation claimed by the Carrier is stated in the Position of the Carrier as follows: "When in the judgment of its officers, the number of patrons to be served and the revenue derived therefrom does not justify the use of stewards, then waiters-in-charge may be used." It should be noted that the contract between the Carrier and the Stewards was made in 1927 and this agreement was in no manner changed or modified by being taken over by the Brotherhood of Railroad Trainmen. There is an entire absence in this record of any showing that Stewards were ever supplanted by waiters-in-charge prior to the date of the original contract. It is asserted by the Carrier that on three separate occasions (one in 1933 and two in 1935) it did supplant stewards by waiters-in-charge, but this was some years after the execution of the agreement, and obviously would not go to the intent or meaning of the agreement as drawn or establish any limitation at the inception of the agreement. The question therefore, is narrowed to the following: Does the unilateral action of the Carrier in supplanting stewards with waiters-in-charge on three separate occasions following the execution of the agreement engraft upon the agreement a limitation which was not a part of the agreement when made? We are convinced that it does not. The limitation contended for would virtually abrogate the original agreement, and change a binding and enforceable obligation of the Carrier to a mere option. The failure of the employees to object at their first opportunity should not carry with it any such drastic penalty as contended for by the Carrier in this case or write into the contract a limitation which goes to the very substance of the agreement. Cf.—Award 735.

The question here involved is not one of construing an indefinite or ambiguous agreement, but is one involving the modification of an agreement which at its inception was neither uncertain or ambiguous. That such modification cannot be made in the manner here contended is confirmed by prior awards of this Board. Cf. Third Division Awards 137, 422, 456 and 735.

The Carrier contends that this agreement between the Southern Railway Company and its Dining Car Stewards should not be held to embrace stewards operating on the Alabama Great Southern Railroad and the New Orleans and Northeastern Railroad. In the "Carrier's Statement of Facts" there is set forth the following: "Southern Railway Dining Car Department is in charge of the operation of dining car service not only on Southern Railway proper but on other lines included as a part of Southern Railway System, and dining cars operated over the Alabama Great Southern Railroad and the New Orleans and Northeastern Railroad are manned with Southern Railway Company employees." In view of this statement of the Carrier we deem the contention made to be without merit.

**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 action of the Carrier in supplanting stewards with waiters-in-charge on trains 43 and 44 constituted an infringement of steward's rights under the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1940.