Award No. 1442
Docket No. DC-1459

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES—LOCAL 582

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (TEXAS AND NEW ORLEANS RAILROAD COMPANY)

STATEMENT OF CLAIM: "Claim of Dining Car Employes Local 582, affiliated with the Joint Council of Dining Car Employes Union and the Hotel and Restaurant Employes International Union, that Sidney Joseph, Toney Cooper, John Parnell, Sam Jones, John L. Sears, Joseph Stephens, Jr., Charles Stephens and Isiar Houston and other dining car service employes of the carrier similarly situated in the employ of the carrier, at station restaurants, be compensated in accordance with the schedule of rates of pay hereinafter shown retroactive to September 1st, 1938, for dining service rendered at station restaurants of the carrier."

EMPLOYES' STATEMENT OF FACTS: "During the year of 1938, the dining service employes of the above carrier selected dining car employes local 582 as their bargaining agent. Pursuant to negotiations had under the amended Railway Labor Act, written agreement was executed by and between this carrier and the Dining Car Employes Local 582, which became effective September 1, 1938, and has ever since, and is now in full force and effect. (Copy of Contract hereinafter known as Petitioner's Exhibit 'A' attached hereto and made a part hereof and incorporated herein by reference.)

"Pertinent provisions of the agreement in question are as follows:

'SCOPE:

'Article I. This schedule is applicable to chefs, cooks, pantrymen, waiters, waiters in charge without steward, lounge and parlor car porters employed by the Texas and New Orleans Railroad.'

'BASIS OF COMPENSATION—OTHER THAN PORTER.

'Article II. Section I. 240 hours or less, in regular assignments, will constitute a basic month's work for employes who are ready for service the entire month and who do not lay off of their own accord.'

'RATES OF PAY: CLASSIFICATION:

'Article IV.

		Per Month	Per Hour
Chef—	first year	$125.00	$.52¼
	one to two years	135.00	.56¼
	two to five years	140.00	.58½
	over five years	155.00	.64¾

to such employes. The organization presenting the case has never been recognized as representing the restaurant employes and such employes are not covered by or provided for in the agreement between the Carrier and its employes represented by Dining Car Employes Local 582.

"The Carrier has exerted every effort to set forth all relevant, argumentative facts, including documentary evidence in exhibit form.

"Wherefore, premises considered, the Carrier respectfully requests that the case be dismissed and/or that the complaint and claims be in all things denied."

OPINION OF BOARD: The scope rule, Article 1, provides that the agreement "is applicable to chefs, cooks, pantrymen, waiters, waiters in charge without steward, lounge and parlor car porters employed by the Texas and New Orleans Railroad." Claimants are in the classification of chefs, cooks, pantrymen and dishwashers, employed by the carrier in the station restaurant at Houston, Texas. In addition, the petition is filed on behalf of other dining car service employes, similarly situated at station restaurants, it being claimed the waitresses in said restaurant are included therein. The restaurant is under the supervision of the manager of the dining car service of the carrier. Claim is made for compensation in accordance with the schedules of the rates of pay in the agreement, retroactive to September 1, 1938, for dining service rendered at the station restaurant. It is the claim of the carrier that the agreement does not cover such employes and does not embrace rates of pay for such positions.

To support its contention, carrier shows that at the time the Union requested conference, it stated that it had been duly designated by a majority of "all dining car cooks, waiters, and porters employed by the carrier to represent and bargain collectively in their interest"; that the Union representative, in proof thereof, presented to the carrier authorizations from a majority of such employes; that the organization was recognized by the carrier as representing the employes in the dining car service; and that a mediation agreement, negotiated by the parties with the help of the Mediation Board, recited that the controversy was settled by "negotiations of an agreement covering chefs, cooks, pantrymen, waiters, lounge and parlor car porters in the Dining Car Department" of the carrier.

It is further shown by the carrier that no mention was made of station restaurant employes at the time of the execution of the agreement; that such employes do not have rights in the service in dining cars, or vice versa; that the organization never asked for seniority lists of the restaurant employes; that no authorizations were ever received for representation by the organization from the station restaurant employes; that they are of a different class and render a different kind of service from that of dining car employes; that seniority in one class does not apply to the other class; that there are no wage schedules in the agreement applicable to restaurant employes; and that it was not contemplated that such employes would be included in the agreement.

It appears that the waitresses are members of the Local on whose behalf the petition is presented in the instant case,—as are probably the employes who are specifically named therein.

Two questions are presented: Whether the restaurant employes are included in the scope rule of the agreement and are represented by the Union as their bargaining agent; and whether the agreement is applicable to them with regard to rates of pay.

The construction of a contract is to be ascertained from the intention of the parties, but when their agreement is expressed in writing, the expression of their intention is to be found in the writing alone, unless it is ambiguous, uncertain, or meaningless. In such a case, resort can be had to the surrounding circumstances to ascertain the intention. In this case, the provision relating to what employes are covered by the agreement, is the scope rule, which clearly provides that it is applicable to chefs, cooks, pantrymen, and

waiters employed by the carrier. Considering waitresses as being included in the description of waiters, which, in our opinion, is a proper construction in view of Award No. 868, all of the restaurant employes are of the same description as those rendering service in dining cars—and inasmuch as they are "employed by" the carrier, and there are no further requirements in the scope rule or elsewhere in the agreement distinguishing between the same description of employes, whether employed in dining cars or restaurants, we are of the opinion that the restaurant employes in question are included in the scope rule. There may be an exception to dishwashers, who are not therein mentioned, unless their duties in the restaurant are similar to those of designated employes in the service rendered on dining cars. While no authorizations were presented by the organization for restaurant employes, they are members of the organization, and the carrier entered the agreement on the basis of receipt of authorizations from a majority of the employes in the above classification; and it appears that the authorizations submitted represented a majority of such employes, regardless of the inclusion in such classification for purposes of authorization, of the restaurant employes. None of the employes are making complaint that they are not a class or craft included in the classification, and such questions are raised, in any event, by application to the Mediation Board, pursuant to Title 44, Section 152 (Ninth) and Title 45, Section 155 (Second), U. S. C. A., 1940 Supp. On the whole record, it can be said that the scope rule covers the employes on whose behalf the petition is filed; that they are represented under the agreement, by the Union; and that the carrier has recognized such Union as the bargaining agent of these employes.

However, although the scope rule, in our opinion, is clear, it is our further conclusion that the rates set forth in the agreement are not applicable to the employes in question. While the restaurant employes are, in our opinion, in the same class or craft as those employed on dining cars, the conditions and nature of their service is dissimilar. It is true that both groups are engaged in service as chefs, cooks, and in the waiting service. But the agreement, read with regard to its many and various provisions, leads inevitably to the conclusion that the rates of pay therein set forth, as applicable to chefs, cooks, and waiters, pertain only to such employes engaged in service on dining cars. It may be asked, if there is no limitation in such specified rates of pay to those employed on dining cars, why the same conclusion should not be adopted as that with reference to the scope rule—that is, that, where there is no specific limitation to employes in service on dining cars, the provisioins should apply to both restaurant employes and those on dining cars. The answer is that we conceive the scope rule to relate to all employes, therein described, who are **employed by the company,** and that the scope rule has a primary purpose of a declaration of representation of all these employes by an agent for bargaining purposes and the recognition thereof by the carrier. Because of the brief, clear, and controlling nature of the scope rule, it is unnecessary to ascertain its meaning from other provisions of the contract. With reference to the provisions relating to wages, we must read them in relation to other provisions of the contract and, if possible, arrive at a reasonable construction. While it is within the power of parties to a contract to stipulate absurd conditions, the rule of construction of a contract is to avoid absurdity, if a reading of the whole contract will enable a reasonable construction to be adopted.

With such a rule in mind, we return to an examination of the various provisions of the agreement. Article 2 provides for counting of continuous time and refers to release from lay-over terminals, set out or turning point, with reductions of hours for sleep **en route.** It further provides for employes at foreign terminals, and those arriving on certain trains. Article 7 provides for service at terminals during rest periods, except where continuous with a trip. Article 8 provides for computation of time where employes are required to deadhead. Article 10 provides that regularly assigned employes will be allowed not less than three rest periods of 24 hours at their home terminal each calendar month. Article 12 provides for seniority of employes, posting of seniority roster, and furnishing same to the representative of the

employes. On reduction of forces, the company is to retain employes who have the greatest seniority in the particular class, and promotion is based upon seniority. In case of vacancies, they are to be bulletined and the senior applicant with sufficient fitness and ability will be assigned. It would seem obvious that these provisions and the provisions for wages read with reference thereto clearly indicate that the wage provisions were applicable to those rendering service on trains, and to those only. It is true that with regard to certain provisions it might be pointed out that such provisions related only to those on trains, while there was no limitation of the wage provisions to such employes. But the provisions with regard to rest periods, vacancies, promotion, and seniority cannot be read with reference to restaurant employes, and there are no limitations in such provisions to those employed on dining cars. If such provisions were applied to all employes as described in the scope rule, waitresses would have rights to promotion on dining cars and could bid on bulletined positions on dining cars. They would also be entitled to the rest periods, which clearly are applicable only to those in train service. Such a construction would result in absurdity. No seniority lists for service on dining cars have heretofore been considered as applicable to employes in the restaurant service; and from the whole record it is clear that it never was intended that the wage provisions in the agreement should apply to the employes in the restaurant service. While both groups are engaged in the same type of work, one of the differences is that one group works on trains and the other in the station, and considering the differences between the two groups, one of which includes a difference in sex, as to a large number of employes, with no showing that waitresses have ever been employes on dining cars, either exclusively or together with men on dining cars, on this carrier—and taking into consideration the various provisions of the agreement, it is our conclusion that the wage provisions in the agreement are not applicable to restaurant employes.

Although the scope rule results in representation of such employes by the bargaining agent and recognition thereof by the carrier, the contractual provisions with regard to wages has no application to this group. It may well be that it was not the actual intention to cover restaurant employes in the scope rule, and the result is the same as though a great variety of employes were represented by a bargaining agent making a contract, but that the contract itself only was concerned with the wages of certain of such employes. It is not the function of this Board to construe a contract in order to include therein provisions for new positions or wage provisions for employes not mentioned as coming within such provisions. This is a matter for negotiation between the organization representing the employes and the carrier.

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 the restaurant employes are included within the scope rule, but no provisions relating to their wages are included in the contract.

AWARD

Claim disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.