Award No. 1444
Docket No. DC-1470

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES—LOCAL 645

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: "Claim of the System Committee, (Local No. 645) (1) that the carrier violated and continues to violate its contract and agreement with the organization, when on and since January 3, 1940, it has, without agreement, removed certain dining car work from the operation of the rules of the agreement and arranged with the Union News Company to perform the work, and (2) by reason of the removal of the work from the operation of the agreement rules, Robert Shelton and ten other employes (Hereinafter named in the statement of fact) were and are deprived of earnings and employment, and (3) that Robert Shelton, et al., shall be reimbursed for all losses sustained as the result of the illegal action of the carrier, and (4) that the carrier shall restore the work to the operation of the agreement rules, there to remain until, by processes provided for in Article 15 of the agreement, other and different arrangements are agreed upon."

EMPLOYES' STATEMENT OF FACTS: "This will certify that there is an agreement in effect between the respective parties that is governing in the instant case, copy of which is on file with the Board.

"On January 3, 1940, the Missouri-Kansas-Texas Railroad, the Missouri-Kansas-Texas Railroad Company of Texas, removed its dining service on trains 5 and 6, which were operated between Kansas City, Missouri, and Denison, Texas.

"Employes who sustained losses are: Robert Shelton, Jessie Porter, Samuel Perrino, Osborn Reed, Luther Jones, Mose Nicholson, Fred Williams, Judge Barr, Thomas Summerville, William Blackwell and Eddie Roberson, all either assigned to service on trains 5 and 6, or displaced by their seniors who held jobs on trains 5 and 6, all either cooks or waiters, and covered by the agreement between the carrier and the organization.

"With the removal of dining service on the trains in question, the carrier arranged with the Union News Company at Parsons, Kansas, and Denison, Texas, to serve its passengers, who were formerly taken care of on the dining cars operated on trains 5 and 6.

"The carrier has been called upon to restore the work to the operation of the agreement rules. It has failed and refused to respond to the demands of the organization respecting the issue here presented."

'Number of hours as designated in regular assigned schedules will constitute a month's work, as per appended schedules marked "A".'

and in Article 14—Changes in Schedules:

'When there is a change in Dining Car schedules, when the number of hours exceeds the maximum number of hours in schedule marked "A" overtime will be paid on a pro rata basis.'

"The contention of the petitioner amounts to saying that the carrier contracted to maintain all of the dining car service set up in schedule 'A' and to continue to employ all men involved in the operations of dining car service under that schedule. The carrier denies that it made such a contract; and asserts that no requirement of this kind can reasonably be read into the agreement. Neither schedule A, nor any other part of the agreement, can be rightly construed as guaranteeing the perpetual maintenance of the schedules outlined in Schedule A. The history of operations under the agreement has been one of frequent changes. The petitioner clearly recognized the fact of changes in schedules in Article 14; and as to reduction of forces in Article 7, which reads:

'ARTICLE NO. 7—REDUCING FORCES

'In reducing forces, seniority will govern. Employes whose service has been dispensed with because of reduction in force, who desire to resume service, must file their addresses with the officer by whom they are employed at the time the reduction of forces, and must advise promptly of any change in address thereafter. Those failing to report for duty or give satisfactory reasons for not doing so within seven (7) days from date of notification, will be considered as permanently out of the service, and if re-employed thereafter, will enter the service as a new employe.'

"The rules of the agreement govern in compensation and working conditions for those employes used in such dining car service as the railroad elects to operate. The agreement is not a guarantee of employment. The practice of patrons eating at station, or other lunch rooms, etc., is an immemorial one. A reduction in dining car service does not constitute an illegal removal of work.

"Except as herein expressly admitted, the Carrier denies each and every, all and singular the allegations of the employes' submissions and requests that strict proof of each and every, all and singular the allegations of employes' submissions be required.

"For the foregoing reasons the Carrier respectfully requests that the Board deny the claim.

"The Carrier requests ample time and opportunity to except to any and all statements contained in the employes' submission and produce any and all evidence at the Carrier's disposal or otherwise to refute alleged facts and contentions made therein."

OPINION OF BOARD: The dining car service has entirely disappeared from the cars on which the employes in question formerly rendered service. There is no dining car service in either dining cars or other cars on the trains, which is a basis of distinction from Award No. 70, Award No. 363, and Award No. 867. The agreement between the parties is applicable to dining car service—to the service of passengers on trains. It appears that petitioner clearly recognizes that the agreement applies only to dining car service and only to work performed on dining cars, by the statement:

"So that there will be no misunderstanding as to our conception of what kind and character of work is covered by Article One of the agreement, **we agree that the work covered by the agreement** is work

performed by chefs, second cooks, third cooks, fourth cooks, waiters in charge, waiters, cooks-portable kitchens, lounge car porters, and bus boys **employed in dining car service of the Carrier.**

"We submit that **dining car work** is that of 'the handling and preparation of food **on cars,** and the serving of food **on trains.**' " See Award No. 70.

The above-mentioned service has been discontinued and none of the work theretofore performed remains. Under these circumstances it cannot be said that the work remains and has been removed from employes under the agreement and assigned to others, as no other persons are performing the dining car service in question. The fact that members of the train crew take orders, for the convenience of passengers, and telegraph them ahead to the different eating houses along the line does not result in the performance, by such employes, of dining car service. The carrier's service requirements are determined by the carrier. See Award No. 39, also Interpretation No. 1, Serial No. 5, thereof. The carrier has not removed the dining car service and farmed it out to other parties. Service in eating houses is an entirely different kind of service from that in dining cars, and such service is not contemplated either in the agreement between the parties or in Schedule A of Operations, Setting up Runs, on which dining car service was operated.

In accordance with the foregoing, the claim should be denied.

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 carrier has not violated the terms 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 28th day of May, 1941.