Award No. 1697
Docket No. DC-1791

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL (582) A. F. L.

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

(Texas and New Orleans Railroad Company)

STATEMENT OF CLAIM: "Claim of the Joint Council of Dining Car Employes, Local 582, A. F. L. for and in behalf of Mrs. Maurene Clay, who was formerly employed as a waitress at the Houston Station restaurant of the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company), that, because of the discrimination in the administration of the current working rules practices, and the amended Railway Labor Act, she was wrongfully discharged, and that said employe be returned to service with full seniority rights, and compensated for net wage loss; retroactive to May 6, 1941."

OPINION OF BOARD: This case is presented to the Board solely on the question of jurisdiction, the Carrier claiming that the Third Division is not given jurisdiction of disputes involving restaurant employes.

In exercising the powers granted to it by the Railway Labor Act this Board must act strictly in accord with the provisions of that statute which defines and limits the authority of each of the four divisions of the Board. The jurisdiction of the Third and Fourth Divisions is set forth in the following language in Section 3 (h):

> "Third division: To have jurisdiction over disputes involving station, tower, and telegraph employes, train dispatchers, maintenance-of-way men, clerical employes, freight handlers, express, station, and store employes, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employes. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employes.
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> "Fourth division: To have jurisdiction over disputes involving employes of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employes of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employes."

It will be noted that disputes covering restaurant employes are not specifically mentioned as within the jurisdiction of the Third Division. This omission does not in and of itself indicate that such disputes are not within the jurisdiction of this Division if a liberal interpretation of the language

used can bring the employes involved within any of the particular classes enumerated. For instance, the term "freight handlers" may include dock laborers who handle or in bulk. Award 1186. The only possible classifications, however, which it might be even suggested include the petitioner are "station employes," "maids," and "dining-car employes." But a most liberal construction of these terms fails to cover the status of this employe. They refer to an entirely different line of work from that in which she was engaged.

It is true that she is an employe included within the scope rule of the agreement. See Award 1442. But the parties cannot by agreement confer on this Division of the Board jurisdiction over a dispute not covered by the applicable provisions of the statute. Concededly, it might be highly desirable that all problems arising under a particular agreement should be determined by one division of this Board. We are concerned, however, not with the desirability of a particular course of procedure but with the power of this Division to act.

It is apparent that this Division of the Board did assume jurisdiction to interpret the scope rule of the current agreement in Award 1442 and did decide that the agreement covered restaurant employes. We do not suggest that it went beyond its power in so doing, for the settlement of that question may have involved the status of other employes covered by the same rule whose rights could properly come before this Division of the Board for determination. Furthermore, it should be noted that this precise question now before us was not specifically raised in that case which concerned only the interpretation of the scope rule of the agreement. In all cases properly before this Division that award may well be a precedent on the question that restaurant employes are covered by the scope rule, but it is not a precedent that this Division has jurisdiction over all disputes involving restaurant employes.

We must, therefore, hold that this Division of the Board has no jurisdiction to consider this dispute.

FINDINGS: The Third Division of the Adjustment Board 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 has not jurisdiction over the dispute.

AWARD

This claim is dismissed on the ground that this Division has no jurisdiction over it.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1942.