Award No. 4019
Docket No. DC-3911

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 516, on the property of the Great Northern Railway Company, for and in behalf of Mr. Hector P. Vassar, et al, similarly situated for compensation in the amount suffered, retroactive to February 20, 1947, namely; the difference between what they earned and were paid as Dining Car Waiters and/or Relief Waiters-in-charge, and the amount they should have received as regularly assigned Waiters-in-Charge of the "Coffee Shop" Car on trains 1 and 2, as a result of Carriers' assigning the waiter-in-charge work on this car to "Assistant Dining Car Stewards" in violation of the scope rules of the current agreement, and that Hector P. Vassar, et al., shall now be assigned to these positions with all rights accruing to them under the existing agreement.

EMPLOYES' STATEMENT OF FACTS: Effective March 1, 1937, the Great Northern Railway Company entered into an agreement with the Association of Dining, Parlor and Buffet Car Employes, an independent association, governing certain classes of Dining Car Employes employed in the Dining Car Department of the Carrier.

The Agreement provided in part:

> "This Agreement between the Great Northern Railway Company and the Association of Dining, Parlor and Buffet Car Employes to provide necessary rules and working conditions for car and train waiters and porters in the Employ of the Railway Company is in lieu of and supersedes all previous agreements and interpretations and rulings thereon and shall be effective from March 1, 1937 until 30 days after written notice shall have been given by either party hereto to the other of a desire to revise or cancel its provisions.
>
> Rule 3—A working fund of Twenty-five ($25.00) dollars will be provided as a bank for each waiter-in-charge or porter-in-charge that they may have money sufficient to properly make change for patrons."

Under the rules of said agreement as quoted above waiters-in-charge and porters-in-charge were assigned to perform the "in-charge" work on so termed "curtailed" dining cars and other like equipment serving a light menu and refreshments.

On or about June 15, 1938, the Association of Dining, Parlor and Buffet Car Employes, affiliated with the Hotel and Restaurant Employes and Bar-

(3) There can be no just claim that in so assigning Stewards to the Coffee Shop Cars, the Carrier arbitrarily took away from the Waiters' craft any work which they formerly enjoyed, inasmuch as the service on such Coffee Chop cars constituted new service, not heretofore enjoyed by either craft.

(4) To sustain the instant claim would constitute not only an award in a jurisdictional controversy but likewise a repudiation of Stewards' Rule 13, which this Carrier feels this Honorable Board will readily recognize would be improper.

For all of the foregoing reasons, this Carrier respectfully requests that this Board deny the instant claim as being without merit under the governing schedule agreements hereinbefore cited.

(Exhibits not reproduced.)

OPINION OF BOARD: By this claim Petitioner is seeking to compel Carrier to assign Waiters-in-Charge to the new "Coffee Shop" Car on Trains 1 and 2 in place of the Assistant Dining Car Stewards now assigned to such car.

In February, 1947 Carrier inaugurated a new train, The New Empire Builder. In addition to a regular diner there was a new Coffee Shop Car consisting of a lunch counter seating ten persons, with a lounge room adjoining. Cold sandwiches, lunches and plate dinners are served. Beverage service is also provided.

Petitioner's Agreement effective April 1, 1942 defining employes included thereunder lists: "1. Waiters-in-Charge, Buffet and Parlor Car Porters-in-Charge," and provides in Rule 16 that a separate seniority roster shall be compiled for those included under such listing. Otherwise it does not appear from the Agreement that Waiters-in-charge have any established rights to be assigned to such work in any particular kind of car.

Petitioner apparently concedes this because it relies on long established usage, custom or practice in support of its claim, contending that Waiters-in-Charge have always been assigned to similar equipment irrespective of the number of persons served per meal.

However, we do not believe that the exclusive right to such work can be established by such a practice, especially in view of Rule 43 of the Agreement.

Rule 43 reads:

> "The consist of crews will be determined by the Management, consistent with service requirements, and the duties will be equitably assigned as between the members of the crew. Any special requirements on bulletined positions will be specified in the bulletin. Employes under this agreement will not be required to perform the duties of other classes of employes, other than under urgent or unusual conditions."

Under that rule the Management clearly reserves the right to determine the consist of crews. In view of the long practice of assigning Dining Car Stewards to supervise serving of food and beverages under certain conditions and circumstances, the rule must be understood to give Management the right to determine whether it will or will not assign a Waiter-in-Charge.

Relying on this right Carrier has agreed with the Stewards to assign one of their craft to all full dining cars. In the Schedule for Dining Car Stewards effective May 1, 1941, Carrier has further agreed under Rule 13 to use Stewards or Assistant Stewards where there is an average of more than 25 servings per meal.

> "All full dining cars, and other dining equipment when averaging more than twenty-five (25) servings per meal, shall be in charge

of a steward at his appropriate rate of pay. Assistant stewards may be used as necessary, but not in sole charge of a dining car at less than the proper steward's rate."

The record here shows more than 25 servings per meal on the Coffee Shop Car.

Carrier contends the Assistant Steward on this car acts only in a supervisory capacity. Petitioner argues the Steward serves passengers in the Lounge or Bar end of the car. If the Steward performs work belonging to the Waiters, it is improper under their Agreement. But even so, such is no ground for assigning a Waiter-in-Charge instead of a Steward.

In assigning an Assistant Steward to the car in question Carrier has not violated the Dining Car Employes' Agreement either as written or as interpreted in the light of custom and practice.

Accordingly, the claim must 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.