Award No. 4067
Docket No. DC-4003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim is filed on behalf of F. Neely, E. Born, J. E. Willis and other employes of the Dining Car Department of the Carrier, who by the terms of Schedule No. 51 of the Chicago, Burlington and Quincy Railroad, Dining Car Department, dated September 25, 1946 Chicago, Illinois, have been arbitrarily deprived of a higher rate of pay by provisions of said schedule.

We further claim that the carrier has violated the provisions of Rule 2 of the present agreement by the carrier's classification of the above employes as Cocktail Lounge Porter-Waiter instead of classifying them as Lounge Car Porter and compensating them at the latter's rate.

We further claim classification for these employes as Lounge Car Porter with pay for same retroactive to September 25, 1946.

EMPLOYES' STATEMENT OF FACTS: On September 25, 1946 carrier issued Schedule No. 51 (Exhibit A) assigning men in the classification of Cocktail Lounge Porter-Waiter to trains 8 and 15 between Minneapolis and St. Louis. The cars on which these employes work are parlor cars, not cocktail lounge cars. Men assigned to these cars are paid the identical rate that is paid to waiters, presently, from 84.17 to 86.25 cents per hour. The rates of pay of Lounge Car Porters presently range from a minimum of 89.48 cents per hour to a maximum of 91.98 cents per hour, as evidenced by Exhibit J.

On August 7, 1947, E. T. Bell, General Chairman of Local 311 of this organization, wrote to P. M. Scott, Superintendent of Dining Car Service, C. B. & Q. Railroad requesting a conference to adjust the claim (Exhibit B). Exhibit C, Mr. Scott's letter to Mr. Bell, indicates the carrier's denial of the claim, after said conference was held.

Under date of August 26, 1947, Mr. Bell addressed a letter to B. B. Brown, Staff Officer, requesting a date for appeal to be heard, (Exhibit D). Mr. Brown replied on September 5, 1947 that he would communicate further with Mr. Bell on this and related matters (Exhibit E). On September 23, 1947, Mr. Brown, by letter set the date of September 30, 1947 to hear the appeal (Exhibit F). On September 25, 1947 (Exhibit G) Mr. Bell indicated his acceptance of the proposed date. Mr. Brown's letter of October 3, 1947 to Mr. Bell (Exhibit H) rejects the claim.

POSITION OF EMPLOYES: The employes take the position that their claim is valid in that the title of the position is misleading, that they are not in reality Cocktail Lounge Porter-Waiters, but Lounge Car Porters. This honorable Board has ruled in the past that employes must be classified and

or altered in accordance with the procedure prescribed by the Railway Labor Act, and

(3) Under the specific provisions of Section (a) of Memorandum of Agreement dated January 12, 1942, and by reference a part of Rule 2 of the applicable collective agreement, Management alone is vested with the authority to determine the number of employes to be used on each run or car, and the duties to be assigned to such employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are assigned as Cocktail Lounge Porter-Waiters. They contend that they should be classified as Lounge Car Porters and rated as such. Rule 2, current Agreement, provides:

"Rates of pay set forth in Memorandum of Agreement between the parties hereto dated at Chicago, Illinois, January 12, 1942, shall remain in effect until changed in accordance with the provisions of the Railway Labor Act as amended."

Sections (a) and (b) of the Memorandum of Agreement of January 12, 1942, provide:

"(a) The Superintendent of the Dining Car Department shall be the sole judge with respect to the number of employes to be used, and the service of such employes on each run or car.

"(b) Subject to the provisions of Section (a) hereof, the following rates of pay shall be applied: * * *."

It is clear under the foregoing rules that the Superintendent of the Dining Car Department may determine the number of employes to be used and the duties each is to perform. The rate of pay, however, is determinable from the employe's classification and that in turn is determinable from the nature of the work that he performs. If these claimants are required to do the work of Lounge Car Porters they are entitled to the rate of pay assigned such position by the Agreement.

The record shows that Lounge Car Porters make diagrams of lounge cars and sell seats in same. They also receive passengers, attend to their wants and assume responsibility for discharging them at their destination. Drinks procured from the diner are served by them. They are in sole charge of their cars and are responsible for keeping them clean enroute.

The record shows that Cocktail Lounge Porter-Waiters receive passengers, attend their wants and assume responsibility for discharging them at their destinations. Cocktail Lounge Cars have a Bartender assigned who is in charge of the car. A Cocktail Lounge Porter-Waiter is also assigned, his duties being to keep the car clean enroute and serve mixed drinks prepared by the Bartender in addition to those already mentioned.

The evidence shows that claimants are performing the work of Lounge Car Porters and consequently should be paid on that basis. The Carrier asserts, and the evidence sustains, that for several years claimants were assigned as Cocktail Lounge Porter-Waiters without complaint by the Organization. Their acquiescence in these assignments precludes retroactive reparations. The claim will be sustained commencing August 7, 1947, the first date the violation was called to the attention of 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

The Agreement was violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.