Award No. 4720

Docket No. DC-4760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

GULF COAST LINES

STATEMENT OF CLAIM: Claim of Dining Car Stewards employed on Gulf Coast Lines that stewards assigned to Trains 3 and 4 were improperly displaced by employes who do not hold seniority rights as dining car stewards on October 15, 1945.

EMPLOYES' STATEMENT OF FACTS: Prior to October 15, 1945, Dining Car Stewards were assigned to Trains 3 and 4 operating on Gulf Coast Lines between Houston and New Orleans. Effective October 15, 1945, Dining Car Stewards employed on these runs were displaced by waiters. Dining Cars 475 and 476 were operated from Houston to New Orleans on Train No. 4 and New Orleans to Houston on Train No. 3, a distance of 363 miles. The seating capacity of diners 475 and 476 is twenty-four (24) persons and the average number of persons served per day the first fifteen days of Ocotber were eighty-three (83) on each diner.

Dining Car Stewards were assigned to operate on Trains 4 and 3 for approximately three years prior to October 15, 1945, and hold seniority rights as stewards on Gulf Coast Lines. Waiters who displaced stewards on these runs do not hold seniority rights as stewards.

POSITION OF EMPLOYES: Committee representing the employes are quoting the following Articles contained in current working Agreement between Missouri Pacific Railroad Company, Gulf Coast Lines, International-Great Northern Railroad and Brotherhood of Railroad Trainmen covering Dining Car Stewards, effective October 1, 1936:

"SCOPE

Rule 1. The following rules will govern the rates of pay, hours of service and working conditions of Dining Car Stewards, except that this agreement shall not apply to Stewards on dining cars operating in through service between San Antonio, Texas, and points in Mexico."

"EXTRA STEWARDS

Rule 5. Extra stewards performing road service in place of a regular assigned steward, or on an extra assignment, will be paid in accordance with their years of service and classification. When used for extra road service, stewards will be paid for actual time worked, with a minimum of eight (8) hours for each day so used."

The Carrier also points to the fact that there was a new agreement entered into with the Stewards, as shown by its Statement of Facts, on March 1, 1948, which was subsequent to the date of this occurrence; i.e., October 15, 1945, and there was no change made in the agreement with reference to the duties of a steward or when or where or under what conditions a steward would be employed. The Employes knew when they entered into the first agreement in 1936, and they have known since that date, that waiters-in-charge have been assigned in dining service at many points on the system, and particularly in the territory where this dispute arose, and never before has there been any protest made.

Claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: This claim arises under the Agreement between Missouri Pacific Railroad Company, Gulf Coast Lines, International-Great Northern Railroad and Dining Car Stewards, which Agreement is dated October 1, 1936. Employes assert a violation of Rule 1 (Scope) which reads as follows:

> "The following rules will govern the rates of pay, hours of service and working conditions of Dining Car Stewards, except that this agreement shall not apply to Stewards on dining cars operating in through service between San Antonio, Texas, and points in Mexico."

The record reveals that prior to 1942 and at the time of the execution of the subject Agreement the seating capacity of Dining Cars on Trains 3 and 4 operating on Gulf Coast Lines was 24 and Waiters-in-charge were assigned thereto. In November of 1942 because of increased passenger traffic, the seating capacity was increased to 32 and Stewards were assigned to the runs. October 15, 1945 the seating capacity of the cars was reduced to 24 and the Carrier displaced the Stewards with Waiters-in-charge. Carrier contends that it has been an established practice for many years to use Waiters-in-charge on dining-lounge cars with seating capacity of 24 or less and, therefore, it was justified in the action taken.

In Award 1235 this Board considering a claim involving the displacement of Dining Car Stewards by Waiters-in-charge stated, "By implication of law, and in the absence of limitation, the Agreement covers all of the work of the kind involved (stewards); and any limitation claimed, not expressed in writing in the Scope Rule or otherwise, must be definitely proved as to fact and extent." In that case the claim of the Employes was sustained. The factual situation confronting the Board therein differed in this respect; at the time of the negotiation of the Agreement, Stewards were in service on the runs involved, whereas in the instant case Waiters-in-charge were so assigned. Here, however, in 1942, the Carrier unilaterally placed Stewards in charge of the diners on the runs involved. Thus it is apparent that the work of the Stewards in service on these cars was placed within the Scope of the Agreement at that time, if it were not included before then. Can it now be said that such work may be removed from the Scope of the Agreement because of a reduction in the seating capacity of the cars? Clearly, to justify such a holding we would have to find an exception to the rule either express or implied. Admittedly, there is no express exception with respect to seating capacity and inasmuch as there is one exception definitely stated in the rule, the language of the rule militates against an inference of other exceptions. Admittedly, one might be implied from a well established practice. The evidence of record, however, does not, in our opinion, clearly support the existence of a well-recognized and clear practice sufficient to constitute an implied exception to the apparent Scope of the Agreement.

The Carrier's argument with respect to the possibility of conflict between the Agreement covering Stewards and that covering Waiters-in-charge is lacking in merit so far as this claim is concerned. If there is such a possibility, the remedy is by negotiation and agreement with the employes involved.

It follows from what we have said above that the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the Parties waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4720
Docket DC-4760

NAME OF CARRIER: Gulf Coast Lines.

NAME OF ORGANIZATION: Brotherhood of Railroad Trainmen.

Upon application of the representatives of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Award 4720 applied to the factual situation presented in the submission of the parties. It is to be applied to trains 3 and 4 when operated with the same type of equipment as indicated in the record upon which the Award was based. To attempt to dispose of questions involving other trains or the same trains operating with different types of equipment would be going beyond the function of interpretation and, in effect, handling a new case on an improper record.

Referee Francis J. Robertson, who sat with the Division as a member when Award No. 4720 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1950.