Award No. 5307
Docket No. DC-5180

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 354

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local No. 354, on the property of Missouri Pacific Railroad Company for and on behalf of all employes employed as cooks and displaced in such employment on and after November 1, 1948 in dining cars having normal seat capacity of eight or more seats that they be returned to such positions with seniority accumulated and unbroken and be compensated for net wage losses suffered by reason of Carrier's violation of Rule 2 (a) of the Agreement between the Organization and the Carrier.

EMPLOYES' STATEMENT OF FACTS: On or about November 1, 1948 Carrier substituted grill car dining service for cafe cars and dining cars operated prior to that date. The trains on which such grill car service was substituted for previously existing service are as follows:

1. Trains Nos. 11-12 between Houston and Brownsville, Texas; grill cars Nos. 824-825; seating capacity 22 seats.
2. Trains Nos. 3-4; cars Nos. 478-477; seating capacity 8.
3. Trains Nos. 3-4 P. M.; cars Nos. 10910-10907; seating capacity 8.
4. Trains Nos. 117-124; car 6415; seating capacity 22.
5. Trains Nos. 116-103; car No. 6411; seating capacity 18.
6. Trains Nos. 131-132; car No. 6413; seating capacity 8.
7. Trains Nos. 19-20; cars 870-871; seating capacity 16.
8. Trains Nos. 119-110; car No. 6408; seating capacity 18.
9. Trains Nos. 219-200; car No. 8732; seating capacity 22.
10. Trains Nos. 212-211 and 231-232; cars Nos. 6401-6402; seating capacity 18.
11. Trains Nos. 15-16; cars Nos. 6410-6412; seating capacity 22.
12. Trains Nos. 821-822; car No. 6414; seating capacity 18.
13. Trains Nos. 25-26; cars Nos. 10908-10909; seating capacity 8.

Rule 2 (a) of the Agreement provided in the last sentence of said section as follows:

the interpretation to be accorded Rule 2 (a), as well as the other provisions of the agreement.

6. The Employes' remedy lies in the negotiation of a new rule under the provisions of the Railway Labor Act, as Amended.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about November 1, 1948 Carrier substituted grill car dining service for cafe cars and dining cars on a number of its trains. The preparation and serving of food and drinks on these cars were assigned to waiters-in-charge and no cooks were assigned. The grill cars offered a less varied menu than the cars for which they were substituted, consisting mostly of sandwiches, prepared, packaged, canned foods and bacon or ham and eggs. The Employes contend that cooks should have been assigned to these cars.

Both waiters-in-charge and cooks are included in the Scope Rule of the applicable Agreement. There is no crew consist rule in the Agreement. The issue presented in this docket, therefore, is clearly that pointed up by the Employes in their submission, to-wit: Whether or not Rule 2 (a) of the effective Agreement requires the assignment of a cook to any car having 8 or more "Normal Dining Car Seats"? Rule 2 (a) is quoted in full in the Carrier's Position and because of its length will not be quoted here.

Rule 2 (a) sets forth the rate of pay for numerous classes of employes and provides that those rates shall apply to such employes listed therein as are assigned to service in the numbered cars listed therein; the rates of pay are geared to the number of "Normal Dining Car Seats" in the cars to which such classes of employes are assigned. Clearly, its overall purpose is to provide for rates of pay for the classes of employes listed therein when so assigned. From the language of the rule it does not appear to have been the intention of the parties to set aside definite divisions of work on all cars having normal dining car seats of 8 or more to the classes of employes listed therein. It cannot, therefore, be said, merely because rates of pay for cooks as assigned on cars having normal dining seats of 8 or more are set forth in this rule, that consequently the rule requires the assignment of cooks to all such cars. On that basis, it would be just as logical to claim that all of the classes of employes listed therein would have to be so assigned with the cooks. Obviously, such absurd results were not contemplated by the parties.

The Carrier has asserted and the Employes do not deny that at the time of the writing of the Agreement, cars of the type known as grill cars were in service on this Railroad and were being operated by waiters-in-charge without a chef or a cook and since 1936 grill coaches served food from grill car menus such as those now in use and such cars were operated by waiters-in-charge. Furthermore, that since 1921 waiters-in-charge have operated club coach cars serving a somewhat more elaborate menu than the grill cars, although on rare occasions a cook was also assigned. The first complaint from the Organization as to this practice was in 1948 with the assertion of this claim. The practice is not inconsistent with the requirements of Rule 2 (a), and is indicative of a practical construction of the rule by the parties themselves which conforms to the meaning which we ascribe to the language thereof.

We find no basis for a sustaining Award.

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 9th day of April, 1951.