

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of D. J. Welligrant, Carl Schroers, H. F. Braun, and Eric Erickson, Cafe Coach Cooks, for difference in earnings on November 6, 1949 and subsequent dates based on Rules 1, 2 and 16 of the Chefs' and Cooks' Agreement effective March 1, 1948.

EMPLOYES' STATEMENT OF FACTS: Prior to November 6, 1949, Cafe Coach Cooks D. J. Welligrant, Carl Schroers, H. F. Braun and Eric Erickson were employed as Cafe Coach Cooks on Cafe coaches operating between St. Paul and Winnipeg on Trains Nos. 1-13 and between Winnipeg and St. Paul on Trains 14-2.

The Cafe Coach Cooks operating on these trains were called on duty at St. Paul at 6:30 A. M.; departing St. Paul at 9 A. M. on Train 1 (North Coast Limited) which handles the Winnipeg Train consisting of mail-baggage car, coaches and Cafe Coach to Manitoba Junction; arriving Manitoba Junction at 1:55 P. M. where Train No. 13 which operates between Fargo and Winnipeg is waiting to pick up the mail-baggage car, coaches and Cafe Coach set out by Train No. 1 and handles same to Winnipeg, arriving Winnipeg at 9:35 P. M. The following day, the Cafe Coach Cook who performs service as cook between Winnipeg and St. Paul departs on Train No. 14 at 8:45 A. M. Train No. 14 which operates between Winnipeg and Fargo sets out the mail-baggage car, coaches and Cafe Coach at Manitoba Junction at 4:37 P. M. and these cars are picked up by Train No. 2 (North Coast Limited); departing Manitoba Junction at 4:50 P. M.; arriving St. Paul at 10:00 P. M.

Cafe Coach Cooks Welligrant, Schroers, Braun and Erickson were assigned to prepare and cook food on the Cafe Coach operating between St. Paul and Winnipeg in accordance with agreement between the Northern Pacific Railway and the Dining Car Chefs, Cafe Coach Cooks, Dining Car Second, Third and Fourth Cooks represented by the Order of Railway Conductors.

On these St. Paul-Winnipeg trains, there were also four Waiters employed on these cafe coaches. In other words, one cafe coach cook and one waiter were employed on each cafe coach.

Effective November 6, 1949, the Carrier canceled the assignment of the four Cafe Coach cooks and assigned the preparing of food and other kitchen work to the four Waiters on these cafe coaches.

to assign a cafe coach cook on a cafe coach that does not require the services of more than one Dining Car Department employe. The Employes, however, by the presentation of this claim are requesting that a cafe coach cook be assigned on a cafe coach under such circumstances. This request if granted would not only constitute the writing of a new rule but would militate against the efficient operation of cafe coach service.

The Carrier is not advocating the proposition that when a waiter in charge is assigned to a cafe coach that under no circumstances should a cafe coach cook be assigned to such a car. In the interest of efficient operation when the demand for food service justifies, a cafe coach cook and a waiter are employed on a cafe coach operated between St. Paul and Winnipeg and when the exigencies of the service are such that one employe can satisfactorily meet the demands of the service, a waiter in charge is employed on this cafe coach. This operation is not in derogation of the rules of the current Chefs' and Cooks' Agreement. Moreover, this operation is in harmony with the Management's obligation to economically and efficiently operate the Railway Company and at the same time serve the traveling public.

The Carrier has shown that there is no rule of the Chefs' and Cooks' Agreement classifying the work of employes included within the scope of that agreement; that prior to July 5, 1947, a waiter in charge was employed on the lunch car operated between St. Paul and Winnipeg, preparing and serving the food and performing work incident thereto; that from July 5, 1947, to November 6, 1949, the variety of food served on this car was increased and a cafe coach cook and a waiter were employed on the cafe coach; that effective November 6, 1949, the food served on the cafe coach operated between St. Paul and Winnipeg prior thereto was discontinued and the positions of cook and waiter were abolished; that effective November 6, 1949, limited food service was offered on the cafe coach operated between Manitoba Junction and Winnipeg and a position of waiter in charge established on this car; and that since long prior to the negotiation of the first agreement covering rates of pay and working conditions of chefs and cooks and continuing on and after such agreements were negotiated it has been the practice on this property to assign a waiter in charge covered by the agreement with Dining Car Employes Union, Local 516, on a car on which only one Dining Car Department employe is assigned.

The claim covered by this docket should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective November 6, 1949, Carrier changed the type of dining service on its Trains 1-13 between St. Paul and Winnipeg and Trains 14-2 between Winnipeg and St. Paul. Formerly a cafe coach handled on these trains was open to the public from St. Paul to Winnipeg. After the aforementioned date, it was closed to the public between St. Paul and Manitoba Junction, so that food was served only between Manitoba and Winnipeg. The seating capacity of the cafe coach was reduced from 18 to 12 and the serving of cooked combination meals and ala carte foods and dinner was discontinued and a limited breakfast and lunch service established. As is apparent from the menus in effect on this cafe coach, the kind of food served on the cafe coach after November 6 required very little, if any, skill in the culinary art in its preparation for consumption, whereas prior to that time and since July 5, 1947, much of the food served required a moderate amount of such skill. In making this change Carrier abolished four positions of Cafe Coach Cooks and four Waiters-in-Charge on the St. Paul to Winnipeg run and assigned a waiter-in-charge on each run to prepare such food as was consumed for luncheon and breakfast on the cafe car between Manitoba Junction and Winnipeg.

The Employes contend that the Scope and Seniority Rules of the Agreement between the dining car employes represented by the Order of Railway Conductors were violated in this action of the Carrier.

The Scope Rule of the involved Agreement reads as follows:

"Rule 1. These rules govern the hours of service, working conditions and rates of pay of dining car chefs, cafe coach cooks, dining car second, third and fourth cooks, employed by the Northern Pacific Railway Company who hereinafter in this agreement are referred to as employees."

The Scope Rule above quoted contains no description of the work covered. However, under the doctrine of many previous Awards of this Board, such work as has been traditionally or customarily performed by the classes of employees listed therein at the time of the negotiation of the Agreement or added thereto by agreement or practice on the property after the negotiation of the Agreement is considered as being embraced in the Rule. It appears that there was an Agreement on this property between the Organization here involved and the Carrier covering chefs and cooks effective February 1, 1937 containing a Scope Rule enumerating the same classifications of employees as those covered in the current Agreement and that the same classifications of employees were also contained in a November 1, 1940 Agreement. Prior to July 5, 1947, only a Waiter-in-Charge was assigned to a lunch car on the St. Paul to Winnipeg run offering the same type of menu which was put into effect in November of 1949. That lunch car was operated for a number of years prior to July, 1947 while the 1940 Agreement was in effect. That fact lends support to the Carrier's assertion that it has been the traditional and historical practice on this property to assign a Waiter-in-Charge on a cafe car on which only one dining car employee is assigned. Such a practice continuing through two Agreements prior to the negotiation of the current Agreement, all containing the same classification of employees and no provision abrogating or inconsistent with the practice, indicates that the parties in the writing of the current Scope Rule did not intend to reserve to Cooks the limited amount of food preparation previously performed and now performed by Waiters-in-Charge on the involved cafe coaches. It follows that 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 Employees involved in this dispute are respectively Carrier and Employees 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 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 5308

DOCKET NO. DC-5201

NAME OF ORGANIZATION: Order of Railway Conductors.

NAME OF CARRIER: Northern Pacific Railway Company.

Upon application of the representatives of the employees involved in the above Award, this Division was requested to interpret the same in the light of an alleged 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 record in the application for an interpretation shows that the parties agree that Award 5308 is understood to mean that it applied to the factual situation presented in the submission of the parties, applied to trains 1-13 and 14-2, when operated with the same type of equipment as indicated in the record upon which the Award was based, and between Saint Paul and Winnipeg.

Therefore, since no dispute exists between the parties as to the allegations upon which the request for interpretation is based, the need for an interpretation is not present, and should be and is hereby dismissed.

Referee Francis J. Robertson who sat with the Division as a member thereof when Award No. 5308 was adopted, also participated with the Division in the dismissal of this request.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.

[1275]