Award No. 5353
Docket No. DC-5380

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of Charles Martin, H. Chisom and Otis Houston, formerly classified as Cocktail Lounge Porter-Waiters in the Dining Car Department of the Chicago, Burlington and Quincy Railroad Company. By the terms of Carrier's Schedule No. 121, effective December 1, 1949, Messrs. Martin, Chisom and Houston had their assignments on Trains Nos. 11 and 12 as Cocktail Lounge Porter-Waiters cancelled, and subsequently were reassigned as Porter-Waiters to the same trains on the same Cocktail Lounge cars.

Claim is also filed on behalf of O. Houston, F. C. Smith, S. P. Ellison, N. A. Dunagan, M. J. Gaiters, C. Wimberly, A. B. Blevins, S. A. Dunn, also formerly classified as Cocktail Lounge Porter-Waiters and assigned to Trains Nos. 1 and 10 of the Chicago, Burlington and Quincy Railroad Company. Under Carrier's Schedule No. 3, effective February 12, 1950, the assignment of the last named group of employes as Cocktail Lounge Porter-Waiter on Trains Nos. 1 and 10 was cancelled and said employes were subsequently reassigned as Porter-Waiters to the same trains on the same Cocktail Lounge Cars.

The Organization contends that Carrier's action as stipulated in Schedules Nos. 121 and 3 has resulted in the Tap Room Stewards assigned to the Cocktail Lounge Cars on Trains No. 11, 12, 1 and 10 now being required to perform duties formerly the responsibility of Cocktail Lounge Porter-Waiters, namely, the serving of beverages to passengers and cleaning the Cocktail Lounge cars prior to the Tap Room Stewards being relieved from duty while en route. The Organization further contends that Carrier's action was unilateral, and as such, violative of Section 6 of the Railway Labor Act, as amended, and Rules 1 and 2 of the collective rules agreements effective August 1, 1943 and January 1, 1950 respectively.

Claim is for all of the above named employes to be restored to their former position of Cocktail Lounge Porter-Waiter and for their reimbursement for all such time as was lost during the period of the cancellation of the original assignment and their reassignment to the position of Porter-Waiter. Request is also made that other employes, affected by Carrier's action resulting from the exercise of seniority, be likewise reimbursed for the loss of such time as they may have sustained.

EMPLOYES' STATEMENT OF FACTS: For many years the classification of Cocktail Lounge Porter-Waiter has been established on the Burlington Trains carrying Cocktail Lounge cars. Such cars are included in the equip-

recognition of merit, Rule 28 was agreed upon and incorporated in the collective agreement of January 1, 1950. This rule simply provides that when a kitchen crew consists of four employes, they shall be rated as Chef-Cook, 2nd Cook, 3rd Cook and 4th Cook. If a kitchen crew consists of three employes, they shall be rated as Chef-Cook, 2nd Cook and 4th Cook. When a kitchen crew consists of two employes, they shall be rated as Chef-Cook and 3rd Cook and when a kitchen crew consists of only one employe, that employe shall be rated as a Chef-Cook. A review of the agreement of January 1, 1950 will disclose that Rule 28 is the only rule in the agreement that even remotely hints of consist requirements. Rule 28 very obviously does not deprive the Carrier of its right to be the sole judge as to the number of employes who will be assigned in a dining car crew and there is nothing in the agreement, inferentially or otherwise, that circumscribes the duties that may be assigned to a Dining Car Department employe.

Shortly after the agreement of January 1, 1950 became effective, representatives of the employes brought up the question of the duties of Waiter-Porters and Porter-Waiters. Although the record in this respect is not entirely clear, representatives of the Carrier are of the opinion that this subject was informally discussed during negotiations preceding the execution of said agreement of January 1, 1950. In any event the parties met at conference on February 6, 1950 and executed said agreement on February 6, 1950 which is enclosed herewith as Carrier's Exhibit No. 8. This agreement spells out in language that defies misconstruction exactly what may be required of Zephyr Waiter-Porters, Porter-Waiters and Cocktail Lounge Porter-Waiters. It was negotiated with experienced representatives of Dining Car employes. They understood and agreed that Porter-Waiters such as those who were shortly thereafter assigned to Trains Nos. 1 and 10 under Schedule No. 3 could perform duties which were primarily those of Porters and that they could also be required to assist in the serving of food and beverages where food and/or beverage facilities were provided.

That part of the record pertaining to the changed personnel assignments on Trains Nos. 1 and 10 supports without equivocation the Management's assertion that the classifications Waiter-Porter and Porter-Waiter are proper and the letter of agreement of February 6, 1950, Carrier's Exhibit No. 8, formally ratifies the long existing condition under which Porter-Waiters and Waiter-Porters acted in a dual capacity in the performance of both the duties of Waiters and Porters. The only remaining question involves an allegation that Tap Room Stewards occasionally serve beverages direct to passengers. In connection with this phase of the controversy attention is again directed to the letter of April 23, 1947, Carrier's Exhibit No. 4, and Carrier's Exhibits Nos. 5(a), (b), (c), (d) and (e). Here, as in that phase of the controversy involving Trains Nos. 11 and 12, the letter of April 23, 1947 ratified and perpetuated existing practices and Carrier's Exhibits Nos. 5(a), (b), (c), (d) and (e) prove that the practice of Tap Room Stewards serving beverages direct to passengers was in existence many years prior to the date of the letter of April 23, 1947 and without interruption has continued since that date.

SUMMARY

The record in this case is absolutely conclusive that the claims as presented are entirely without merit. A sustaining award in the light of this record would be untenable, unjustified and in total disregard of the evidence presented by the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim arises as a result of Carrier's action in reclassifying positions of Cocktail Lounge Porter-Waiter to Porter-Waiter positions on its trains Nos. 11 and 12, effective December 1, 1949; and on trains Nos. 1 and 10 effective February 12, 1950. The Employes request that the former positions of Cocktail Lounge Porter-Waiter be restored and the employes involved be reimbursed for time lost as a result of this action.

The position of the Employes bottoms on a contention in effect that Cocktail Lounge Porter-Waiters have the exclusive right to serve drinks to passengers and that this reclassification of positions was improperly accomplished by the Carrier requiring Tap Room Stewards, not included within the Agreement between the parties, to serve drinks to passengers at the time of and subsequent to said reclassification of positions. The evidence of record does not sustain such contention; therefore the claim should 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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