

Award No. 5615

Docket No. DC-5693

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 582
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 582, on the property of the Texas and New Orleans Railroad Company, for and in behalf of Bennie Harris, Henry Brown, Garfield Garner, Steve Banks, Henry Freeman and others similarly situated, on the Sunset, (trains No. 1 and No. 2) for the difference between the rate of pay they are presently receiving as third cooks and what they should receive as second cooks while performing the duties in the latter classification. This claim commences as of December 18, 1950, and shall continue until satisfactorily adjusted.

EMPLOYEES' STATEMENT OF FACTS: The aforementioned claimants and all others similarly situated are now and have been since the date herein before mentioned in the Statement of Claim, in the carrier's employ. It appears that these claimants, prior to the day these claims arose, were in the carrier's employ as third cooks. That according to the records and agreement between the parties and by custom and usage, third cooks have certain specific duties to perform and as such third cooks, certain wage scales and rates of pay have been set up and reduced to writing.

It further appears, that at the time these duties were being performed and while and during the period these claimants and others similarly situated were being compensated as third cooks, and while during the same period these claimants were being classified on the third cook seniority roster, the carrier through no fault on the part of these claimants and others similarly situated removed certain employees, designated as second cooks. That these said second cooks had, had certain other duties to perform and were compensated in a different wage rate and were listed on entirely different seniority list; that the difference in wage scale is, as the result of the written agreement between the carrier and its dining car employees.

That the carrier removed all second cooks from the trains where the claimants and others similarly situated were employed, and the carrier did not and has not as of the date of this instrument replaced the said third cooks. The Claimants et al. have had, since the date as has been set forth in their statement of claim, to do the work of the second cooks.

That prior to the removal of the second cooks, the trains involved had been operated with a crew of Cooks, composed of the Chef, Second Cook, and Third Cooks, but are now operating with a crew of cooks designated by pay, seniority as chef and third cook.

The Claimants submit herewith, claimant's Exhibits I, II and III, that they are attached hereto and made a part hereof. Said Exhibits being replicas of the initial correspondence from the claimants representative to the carrier,

to Award 5157, already referred to, see also Awards 73, 109, 189, 613 and Interpretation No. 1, 1687, 1792, 2029, 2622, 2683 and 5222. As further support of the Carrier's position that it is not the function of the Board to make or change rules, but to interpret and apply the contract as it exists, the United States Court of Appeals, Seventh Circuit, in Case No. 9595 said, in part:

"* * * In reality, what the Board did was not merely to exercise its statutory authority to interpret and apply the contract as it existed but to make a new and different contract between the brakemen and the carrier. We think the five members of the Board who dissented from the Award properly characterized the action of the majority when they stated in their dissenting opinion:

'The lesson of the award is that contracts may be altered, changed, or amended, in plain violation of the Railway Labor Act, merely by the assertion of a claim which has no foundation for support in the agreement. That these are the correct conclusions to be drawn from the wanton usurpation of power by the majority which voted for the award, is adequately fortified by the undisputed facts of record which were before us.'" (Underscoring by the Carrier, for emphasis.)

CONCLUSION

The Carrier has shown the rules of the Agreement were not violated; that the Organization can cite no rule in support of its claim; and that the claim is a request for a new rule.

It is affirmatively stated that all documentary evidence introduced herein has been made available to the Organization.

As the Carrier has not been furnished with the Organization's ex parte submission, it is not in position to know the contentions that will be made or attempt to answer them at this time. Every effort has been exerted to set forth all relevant argumentative facts, including documentary evidence in exhibit form, but as it is not known what the Organization will present, the Carrier desires an opportunity to make such additional answer thereto as may be deemed appropriate.

Wherefore, premises considered, the Carrier respectfully requests that the claim in all things be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no definition of duties of the various classes of Cooks contained in the Agreement between the parties. Therefore, the actions of the parties over a long period of time is the best evidence of the intentions of the parties under the Agreement.

Under the facts in the instant case, 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: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1952.