Award No. 5616
Docket No. DC-5694

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 582

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 582, on the property of the Southern Pacific Company, for and in behalf of Andrew Lewis, Clarence Williams, Lenox Sexton and all others similarly situated, on Imperial diner, trains (39-40) 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 of the latter classification. This claim commences as of December 10, 1950, and shall continue until satisfactorily adjusted.

EMPLOYES' 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 accordingly 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 in 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 employes, 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 employes.

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 third cooks.

That prior to the removal of the third cooks, the trains involved had been operated with a crew of cooks composed of the Chef, Second Cook and Third Cook, 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 one, two and three, that they are attached hereto and made a part hereof. Said exhibits being

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.