

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 David Culver, Joseph Broussard, Johnnie Flemming and all others similarly situated in the Coffee Shop Cars in the Sunset Limited 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 hereinbefore 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, designed 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 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 replicas of, the initial correspondence from the claimants representative to

In submitting the instant claim to this Board the organization is, apparently, hoping that an award will be rendered which would have the effect of writing an agreement rule to provide for a procedure which it was not successful in securing through negotiations on the property. It is a well-established principle that it is not the function of this Board to supply a new rule where none exists nor to modify an existing rule, furthermore, this Board has held, in a long line of awards (and recently in Award 5354, April 27, 1951) that where an agreement is silent with respect to a certain feature "the actions of the parties over a long period of time is the best evidence of the intentions of the parties under the agreement."

A previous award of this Board justifies a denial of the instant claim.

In "Opinion of Board" of Award No. 1451, covering dispute between Joint Council Dining Car Employees vs. Missouri-Kansas-Texas Railroad Company relating to a claim in behalf of certain dining car employees for second cooks' rate of pay instead of third cooks' rate of pay, this Board said in part:

"The carrier did not agree that all third cooks in the Kansas City Pool were performing the duties of second cooks. It is true that it is claimed on behalf of employees that the cooks here in question were performing such duties. But it is vigorously denied by the carrier. And there is no proof that the two employees in this claim actually performed the duties of second cooks. * * *"

and in "Findings" it is stated, in part "That the carrier did not violate the agreement" and in "Award" it is stated that "Claim denied." In that dispute the organization, representing the claimants, relied, for support of the claim, upon an agreement rule, as follows:

"Employees temporarily assigned to higher rated position shall receive the higher rate. Assigned employees who are temporarily required to assume duties of a lower rated position, shall not have their rates reduced."

In the instant case the carrier has denied, in its correspondence and its conferences with the general chairman, that the claimants were performing duties which entitled them to second cooks' rate of pay and it has shown, in this submission, that the claim is without basis.

The aforementioned award justifies a denial of the claim.

CONCLUSION.

The carrier asserts that it has conclusively established that the claim in this docket is without basis or merit and therefore submits that it should be denied.

All data herein submitted have been presented to the duly authorized representatives of the employees and are made a part of the particular question in dispute.

(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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

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