Award No. 5964
Docket No. DC-6149

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Carrier violated the effective rules agreement covering its Dining and Parlor Car employes when, without conference or agreement, it issued Bulletin No. 493, dated October 16, 1951, by which employes previously properly classified as Chef-Cooks and Second Cooks were eliminated from the consist of crews on dining cars operated on Trains 111 and 112. This action is violative of Rule 12 of said agreement.

Claim is for all Chefs affected by the above action to be compensated in the amount of the difference in pay between Chef-Cook and Cafe Car Chef-Cook rates for all time worked during the life of Bulletin No. 493, or any subsequent bulletin requiring the assignment of Cafe Car Chef-Cooks to the above mentioned trains. Likewise, claim is also made that all employes affected by Bulletin No. 493, who formerly were classified as Second Cooks, be compensated in the amount of the difference in pay between Second Cook and Third Cook rates during the life of said bulletin or any subsequent bulletin requiring the assignment of Third Cooks instead of Second Cooks to the above mentioned trains.

EMPLOYES' OF FACTS: For approximately ten years Chicago, Rock Island and Pacific Trains 111 and 112 have carried standard size dining cars between Little Rock, Arkansas and Tucumcari, New Mexico. During the period referred to above Dining Cars 8016, 8024, 8025 and 8033 have been assigned to this run, and in fact, are still so assigned.

Since the year 1943, when this Organization was certified to represent the Carrier's dining car employes, and possibly even before then, Dining Cars 8016, 8024, 8025 and 8033 were standard size dining cars seating thirty-six passengers. On these cars the consist of crew specified that three cooks would be assigned. Bulletin 493, issued October 16, 1951, specified that the consist of crew number two cooks instead of the original three. These two cooks, under the Bulletin, would be and are presently classified regularly as Cafe Chef-Cook and Third Cook. The Carrier, when challenged to explain its arbitrary and improper action in making these classifications, gave as its reason the alleged fact that the above mentioned dining cars were cafe cars. Under the Consist of Crew and Assignments Rule 12 (b) of the effective rules agreement, Carrier reasoned, erroneously we are convinced, that the portion of the Rule pertaining to Cafe Cars was applicable here. For the convenience of the Board, we quote that portion of the Rule here:

Several conferences regarding this earlier dispute were held with representatives of the Organization and the final understanding was outlined to Mr. Mallery in the following letter written by Mr. T. D. Wickham, Carrier's Superintendent of Dining Cars.

"June 29, 1949
File 15-K

Mr. G. E. Mallery:

Your file L-131-50 and L-131-51 of June 20.

1. In connection with rate of pay chef-cooks on dining cars Trns. 111-112. On June 27 cars assigned to No. 111-112 were automatically converted to dining cars when additional tables were placed therein and as a result, the dining car chef's position as well as position of second cook has been advertised for bid. **It is also understood that at any time that dining cars are converted to cafe cars, that positions thereon will be bulletined and vice versa.**

2. Parlor car run on Tr. 510 and the request by Mr. Patrick that 2 employes be assigned thereto. The schedules of hours will not permit the assignment of 2 men, therefore, the question of assignment is left open for further discussion at some later date.

/s/ T. D. Wickham.

cc. Mr. C. L. Patrick" (Emphasis added.)

The foregoing correspondence proves conclusively that it has been a practice of many years standing for the Carrier to convert its dining cars to cafe cars based on service requirements. The correspondence also shows that the Organization has long been aware of the Carrier's method of changing the classification of the employes involved in these changes.

On the basis of the facts of record, the Carrier respectfully petitions the Board to deny the claim.

(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.

Based on the facts in the 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
Secretary

Dated at Chicago, Illinois, this 17th day of October, 1952.