

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Protest of the Brotherhood of Railroad Trainmen against the failure of the Carrier to assign a steward to the restaurant car operated on Trains Nos. 407 and 408 between Portland and Seattle commencing with September 29, 1951.

JOINT STATEMENT OF FACTS: Passenger Trains Nos. 407 and 408 are scheduled to operate daily between Portland and Seattle as follows:

Train No. 407 leave Portland 10:00 A. M.—arrive Seattle 2:00 P. M.

Train No. 408 leave Seattle 12:30 P. M.—arrive Portland 4:30 P. M.

Prior to September 29, 1951 one restaurant car was operated on Trains Nos. 407 and 408 and this restaurant car was manned by a complete dining car crew consisting of:

- 1 Steward
- 1 Chef
- 1 Second Cook
- 1 Third Cook
- 1 Counter Waiter-in-Charge
- 4 Waiters.

The food service offered the traveling public on this restaurant car consisted of complete meals, ala carte meals, lunches, beer and wine.

Effective September 29, 1951 a dining car was placed in service on Trains Nos. 407 and 408 in addition to the restaurant car and thereafter a dining car and a restaurant car have been operated on those trains. The dining car is manned by a complete dining car crew consisting of:

- 1 Steward
- 1 Chef
- 1 Second Cook
- 1 Third Cook
- 5 Waiters.

Complete meals, ala carte meals, lunches, beer and wine are offered on the dining car.

practice thereunder. Moreover, this operation is in harmony with the Management's obligation to economically and efficiently operate the Railway Company and at the same time serve the traveling public.

Should the Employees in this docket allege that the Waiter in Charge be replaced by a Dining Car Steward, all parties at interest are entitled to be heard before the rendition of an award that would operate to remove the Waiter in Charge from the restaurant car operated between Portland and Seattle.

Waiters in Charge are included within the scope of the Agreement with Dining Car Employees' Union Local 516. Should the Employees request that the Waiter in Charge on the restaurant car operated between Portland and Seattle be replaced with a Dining Car Steward, Dining Car Employees' Union Local 516 has a vital interest in the outcome of this dispute. Dining Car Employees' Union Local 516 has a right to be heard before any award is rendered that would operate to replace the Waiter in Charge with a Dining Car Steward. See Award No. 2596 of this Division and Awards therein cited, and Award No. 5759 of this Division and the awards therein cited.

The Carrier has shown that by custom and tradition Dining Car Stewards are assigned to dining cars offering complete meal service; that Waiters in Charge are assigned to cars offering limited meal service; that limited meal service is offered on the restaurant car operated on Trains 407 and 408 between Seattle and Portland; that in consonance with the customary and traditional practice a Waiter in Charge has been assigned to this car.

The Carrier has also shown that there is no rule of the March 1, 1948 Stewards' Agreement abrogating this customary and traditional practice; that Rule 4(a) of that agreement was negotiated for the specific purpose of avoiding a contention that Dining Car Stewards have a right by agreement to be assigned to a car offering limited food service; that by the negotiation of Rule 4(a) the parties to the current Stewards Agreement have placed their stamp of approval on the customary and traditional practice in effect on this property.

The Carrier has further shown that an award that would have the effect of requiring the assignment of a Dining Car Steward on the restaurant car operated on Trains Nos. 407 and 408 under present conditions would have the effect of vitiating a customary and traditional practice which this Division in a long series of awards has consistently held can only be accomplished by negotiation and agreement.

The protest covered by this docket should be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The question involved here is whether the Carrier is required by Rule 4(a) of the applicable Agreement to assign a steward to the restaurant car on Train No. 407 and that on Train No. 408, which trains operate daily between Portland and Seattle. Prior to September 29, 1951, one restaurant car was operated on each of these trains; complete food service was offered and a steward was in charge. From that date forward, a dining car was operated on these trains in addition to the restaurant car, the restaurant car offering limited, basically informal, food service, and the dining car offering complete, more or less formal, food service. The Employees herein challenge the Carrier's failure to use a steward on the restaurant car since the addition of the dining car to the train.

The Employees urge that their protest be sustained under Rule 4(a), which provides:

"Rule 4(a). Full dining cars shall be in charge of stewards at their appropriate rates of pay. Assistant stewards may be used if necessary, but not in sole charge of dining car at less than the steward's rate applicable to the assistant steward's continuous length of service."

The parties disagree widely as to the meaning of the term "full dining cars" as used in Rule 4(a). And this Board cannot say that the term is so clear and free from uncertainty as to be considered completely unambiguous. In this situation it is necessary and proper to leave the four corners of the Agreement in determining the meaning of the term.

The Employees contend that the type of meal service is irrelevant in giving meaning to the term; they contend that the seating capacity or size of the car must be determinative of the question whether a given car is a "full dining car" under Rule 4(a). The Carrier, on the other hand, contends that the type of meal service is determinative of the question—that "complete" meal service is the distinguishing feature of a "full dining car." Custom and past practice on this property abundantly support the conclusion that neither the contention of the Employees nor that of the Carrier is entirely correct.

The Record discloses that by custom and tradition on this property stewards have been assigned to cars offering "complete", more or less formal, food service, and that Waiters-in-Charge have been assigned to cars offering "limited", basically informal, food service. But one possible and important exception, soon to be noted, must be recognized as established by custom. This exception emphasizes the dilemma encountered when either completeness of service or size of the car is attempted as the sole and basic test. Certainly the exception poses the question: just how complete must food service be to be considered complete? Traditionally on this property cafe coach service has not been in charge of a steward. Plate luncheons are served on cafe coaches. Comparison of the cafe coach menu with those for the restaurant car and the dining car, all of which menus are a part of the record, reveals that cafe coach service is somewhere between that of restaurant car and dining car service in so far as "completeness" is concerned. It cannot strongly be denied that cafe coach service is not a lot less complete, judging from the menus, than dining car service; cafe coaches do serve full hot meals. But cafe coach seating capacity is considerably less than that of dining cars. In pursuing their argument that size is the distinguishing feature of a "full dining car", the Employees have declared that they "have never contended that they should be assigned to these cafe cars that serve full meals * * *." The Carrier of course denies that cafe coaches provide "complete" food service.

The Record discloses that practice and tradition on this property prior to 1936, when Rule 4(a) was first placed in the Agreement (as Rule 5(a)), and continuing without protest by the Employees after 1936 up to the time of the instant claim, has been clear and unchanged in so far as use or lack of use of stewards on food service cars is concerned. The language of Rule 4(a) was continued verbatim in the 1948 Agreement, which fact very strongly indicates that the presently effective Agreement was not intended to disturb the customary and traditional practice regarding the assignment of stewards to food service cars. That customary and traditional practice gives meaning to the term "full dining car". It shows that the term must mean full in all respects—full as to completeness of food service, at least to the point of serving full hot meals; full in the sense that the car is the size of, or at least not a great deal smaller than, diners customarily and commonly used on railroads in America; full in the sense that the service is more or less formal, or at least is not basically informal as where only sandwiches, soups and drinks are served. It would thus seem clear that all these features are characteristic of "full

dining cars" on this property, and the Record fails to reveal any instance when a steward was used in a food service car which significantly lacked any of these characteristics. Indeed, these are the characteristics of the type of food service one ordinarily would expect to find in charge of a steward; they are the characteristics which make necessary and justify the services of a dining car steward.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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

The protest is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1953.