

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

STATEMENT OF CLAIM: (a) Protest of the BofRT and Dining Car Stewards against the displacement of Dining Car Stewards by Waiters in charge on dining cars operated on Trains 15 and 16, the Hustler, between Houston, Texas and Dallas, Texas; and

(b) Claim of the BofRT and Dining Car Stewards for pay for a Dining Car Steward, available for service on these cars, June 20, 1951, and all subsequent dates on which waiters performed work properly belonging to Dining Car Stewards; and

(c) Request of the BofRT and Dining Car Stewards that the individual Stewards entitled to receive such payments of claims be determined by a joint check of the payrolls and seniority roster.

EMPLOYEES' STATEMENT OF FACTS: The current agreement for Dining Car Stewards, effective March 1, 1948, provides in part:

"RULE 1 (SCOPE)

"The title of "Dining Car Steward" will embrace all titles heretofore applied to all employees who qualify for the duties on, and are in charge of dining cars in passenger train service.

NOTE: Nothing herein is to be construed as calling for the use of stewards on lunch cars."

"RULE 2 (a) & (e)

"(a) Two Hundred Twenty-five (225) hours or less shall constitute a month's work for regularly assigned stewards who are ready for service the entire month and who do not lay off of their own accord. All time paid for shall be credited against the basic month.

"(e) Time will be counted as continuous from time required to report for duty until release from duty at layover terminal, set-out or turning point, subject to deduction of eight (8) hours for sleep each night en route. Where stewards are required to remain on duty any part of the rest period they will be compensated therefor on the actual minute basis."

Every effort has been made to set forth all known relevant argumentative facts, including documentary evidence in exhibit form.

Wherefore, premises considered, the Carrier respectfully requests that the protest and claims be in all things denied.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute involves the use of waiters-in-charge on what the Trainmen's Committee claims to be dining cars on Carrier's trains Nos. 15 and 16, called the "HUSTLER", on and after June 20, 1951. The "HUSTLER" operates between Houston and Dallas, Texas. It is the Committee's contention that stewards should have been in charge thereof and the failure to do so was in violation of the Scope of their agreement. In view of this fact it asks for pay, on and after June 20, 1951, for dining car stewards who were available for this service and not used. It requests that a joint check be made of the Carrier's records to determine who the individual stewards were that are entitled to receive this pay.

Carrier objects to the blanket form of the claim. It contends it should have been made in behalf of individual stewards. We have often approved claims in this form. As stated in Award 3687:

"The fact that the claim is general and fails to name the claimants except as a class is not a bar to the disposition of the claim. See Awards 3251 and 3423."

The reason therefor is well set forth in Award 4821 as follows:

"We think the correct procedure is to permit the filing of general claims when the question at issue operates uniformly upon a class of employes that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an Agreement ought not to be unnecessarily difficult by requiring the filing of a multitude of claims, when the disposition of a single issue decides them all. This Organization is authorized to represent the employes and where no prejudice arises out of group handling, we think it is entirely proper."

Primarily involved is the question of whether or not Carrier violated Rule 1 of the parties' effective agreement by doing what is here complained of. In determining this question we are in no way concerned with the provision of the agreement which Carrier has with Dining Car Employes Local 582, which covers waiters.

Rule 1, in so far as here material, provides as follows:

"The title of 'Dining Car Steward' will embrace all titles heretofore applied to all employes who qualify for the duties on, and are in charge of, dining cars in passenger train service.

"Note: Nothing herein is to be construed as calling for the use of stewards on lunch cars."

This Rule requires Carrier to place a steward on and in charge of a "dining car" when used in passenger train service but not in charge of a "lunch car" when so used.

Work embraced within the scope of an agreement cannot properly be removed therefrom and assigned to employes not subject to its terms. Consequently those positions which fall within an agreement cannot be removed therefrom and to do so is in violation of the agreement.

Prior to June 20, 1951 Carrier used Cars Nos. 951 and 952 on its Trains Nos. 15 and 16, Houston to Dallas. These cars seated 36 customers, had a

complete kitchen in operation, served full-course meals and carried a regular crew of cooks and waiters. There is no question but what this constituted dining car service and Carrier properly had a steward in charge thereof.

Because of low revenues and high operating costs Carrier, in the interest of efficient and economical operation, found it necessary to make a change in this service. Effective as of the end of the run of Trains Nos. 15 and 16 on June 19, 1951 it discontinued using Cars Nos. 951 and 952 on trains Nos. 15 and 16 and, in place thereof, commencing on June 20, 1951, it used Cars Nos. 932 and 933. Cars Nos. 932 and 933 are referred to by Carrier as lounge-lunch cars. The seating arrangement of these cars seems to be 18 parlors or lounge seats, including a sofa, in the lounge part thereof and 12 seats in the part thereof where food is served. The kitchens in these cars are sealed and not used. A gas burner in the pantry is used for frying eggs and warming a few miscellaneous items that are served warm. Breakfast and lunch are the only meals served and the menu is very limited. Apparently snacks are also served. A waiter is in charge and he does all of the work except occasionally a dishwasher is assigned to help him, usually on week-ends or holidays.

The question is, was Carrier, on and after June 20, 1951, furnishing dining car or lunch car service on trains Nos. 15 and 16 from Houston to Dallas? It is generally understood by the public that a lunchroom is a place specializing in foods ready to serve or food that can be quickly prepared for light meals. A lunch car, as used in Rule 1, would have the same meaning. The service offered the public on Cars Nos. 932 and 933, as shown by the menus used, brings it within this classification.

We find Carrer made a bona fide change from dining car to lunch car service on its Trains Nos. 15 and 16, Houston to Dallas, as of June 20, 1951 and that under Rule 1 "Note" it was not required to place a steward in charge of these lunch cars.

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 has not violated 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 3rd day of August, 1953.