Award No. 7908
Docket No. DC-7483

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Joint Council Dining Car Employees Local 516 for and on behalf of Tray Service Waiters C. R. Bradley, Littleton T. Gardner, J. R. Williams, Kenneth W. Crawford and others similarly situated; that they be paid for 77 hours and 30 minutes each.

EMPLOYES' STATEMENT OF FACTS: It appears that this carrier instructed train attendants on Trains 1 and 2 to perform work in addition to their regular duties; that such work was a part of the duties of the tray service waiters. It further appears that while the train attendants were performing this additional work, claimants were on furlough, available but were not being used.

The carrier, in its letter of August 31, 1954, paragraph 2, admits its instructions to train attendants as to their serving of food, etc. It further admits in paragraph 3 of the same letter that claimants were in the status of extra employes at this particular time.

In this carrier's Special Rules and Instructions as of January 1, 1949 beginning on Page 13, the carrier sets forth the duties of train attendants as follows:

> (a) Train attendants shall read and study the contents of this book of rules and not only become familiar with their duties but also understand that they, the same as other train personnel, shall meet the public with courtesy and give prompt and cheerful service at all times.
>
> (b) Train attendants are a part of the dining car crew and are under the dining car steward's supervision; however, as the train conductors are in charge of their trains and all employes thereon, the attendants shall comply with the conductors' instructions.
>
> (c) Except in emergencies, attendants will not be requested to perform duties that are not a part of their regular duties.
>
> (d) In the event that it should be necessary, at any time, to cut out a dining car enroute, the train attendants shall remain with

agreement furnishes convincing proof that their abrogation was never intended."

There is no rule in the agreement effective July 1, 1950 directly or indirectly abrogating the customary practice followed on this property with respect to handling the sale of fruits and candy in coaches. Waiters or train attendants perform this function and neither class of employes have acquired the exclusive right to handle the sale of fruits and candies in coaches. In the absence of any rule negotiated in the agreement of July 1, 1950, abrogating this customary and traditional practice, on the basis of the sound principle enunciated by this Division in the above enumerated awards, this practice is enforceable to the same extent that the rules of the agreement effective July 1, 1950 themselves are enforceable.

The Employes have presented a claim for payment of seventy-seven hours and thirty minutes each to Waiters Bradley, Gardner, Williams and Crawford. The Carrier has been unable to determine what the seventy-seven hours and thirty minutes represents. No record has been kept of the number of hours consumed by train attendants in handling the sale of fruits and candies in coaches during the period April 7, 1954 to June 16, 1954 on Trains Nos. 1 and 2. Therefore, if seventy-seven hours and thirty minutes, which amounts to three hundred and ten hours in the aggregate for the four waiters, is designed to represent the number of hours consumed by train attendants in handling the sale of fruits and candies in coaches on Trains Nos. 1 and 2 from April 7, 1954 to June 16, 1954, this is purely conjectural.

In addition to the four named claimants, the Employes are also demanding payment of seventy-seven hours and thirty minutes to "others similarly situated." This facet of the Employes' claim is too indefinite and uncertain to be considered. The ascertainment of "others similarly situated" cannot be accomplished. If the total time consumed by train attendants in handling the sale of fruits and candy in coaches on Trains Nos. 1 and 2 during the period involved aggregated three hundred and ten hours, it is axiomatic that "others similarly situated" have not been deprived of work in any view of this dispute. Therefore, the claim in behalf of others similarly situated should be dismissed. See Awards Nos. 6101, 6179, 6339, 6348, 6388 and 6529 of this Division.

The Carrier has shown that neither by agreement nor by custom and practice have waiters acquired the exclusive right to handle the sale of fruits and candies in coaches on Trains Nos. 1 and 2. To the contrary, the Carrier has shown that by custom and practice train attendants have acquired a right equal to that of waiters to handle the sale of fruits and candies in coaches on Trains Nos. 1 and 2. The claim covered by this docket should therefore 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 Employes and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made in behalf of 4 named employes, classified as Tray Service Waiters, and other employes similarly situated, for compensation to the extent of 77 hours, 30 minutes each, account of Carrier's allegedly improper action in reassigning certain duties, namely the sale of candy, fruits, etc., in coaches.

The Organization asserts that the sale of various items in coaches was properly a function to be performed by waiters rather than Train Attendants in view of the fact that these duties were specifically assigned to Waiters in the Special Rules and instructions issued by the Carrier.

The Respondent took the position that the performance of the work in question was properly assignable to either Waiters or Train Attendants. It was pointed out that the shift of these duties from Waiters was occasioned by the decrease in the seating capacity of the diners on the trains in question, but that when the seating capacity was again increased said work was again assigned to Waiters.

Petitioners here are relying on the contents of the Special Rules and Instructions issued by the Carrier. While the said rules and instructions make mention of the sale of candy, fruit, etc., by Waiters, they (instructions) do not say such functions are to be done only by Waiters. However, in any event such rules and instructions are not a part of the collective agreement, and are subject to change at the Carrier's discretion.

The confronting Scope rule does not detail the work encompassed thereby. This Board in many previous Awards has established the doctrine that work which is customarily and traditionally performed by the employes covered thereby is embraced by the Rule. The record indicates that over the years the work in question has been assigned to and performed by both Waiters and Train Attendants.

Since the Organization has been unable to show a continuing custom and practice in regard to the exclusive performance of this work (by waiters) and since no specific coverage thereof is set out in the Scope Rule we cannot properly find that the agreement was violated or that the claim is meritorious.

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 the Carrier did not violate the effective agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1957.