Award No. 8828
Docket No. DC-8776

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 516, on the property of the Great Northern Railway Company for and on behalf of Waiters-in-Charge Paul Wood, Riley Gilchrist and other employes similarly situated for 66 hours each, per trip, at the current rate of pay for second cooks for as many trips as said employes made on Coffee Shop Car assignment, Trains 3 and 4 between January 11, 1955 and May 24, 1955 for the reason that said employes were required to perform the duties formerly performed by assigned second cooks in addition to their own duties as regularly assigned waiters-in-charge said additional assignment of second cook duties to waiters-in-charge being in violation of Rules 39(c) and 43 of the current agreement.

EMPLOYES' STATEMENT OF FACTS: In order to properly present the instant claim as it concerns the matter set forth in the Statement of Claim, it is necessary to give the chronological history of the assignments to coffee shop cars on Carrier's trains 3 and 4.

On or about June 9, 1954, Carrier assigned a crew consisting of a steward, a chef and a waiter No. 1 per bulletin No. 52 (Employes' Exhibit "A" attached hereto).

On June 11, 1954, the Carrier added as regularly assigned employes, a third cook and waiter No. 2 per bulletin No. 53 (Employes' Exhibit "B" attached hereto).

On September 23, 1954, the assignment of steward, chef and waiter No. 1 as outlined in bulletin No. 52 (Employes' Exhibit "A") was cancelled (Employes' Exhibit "C").

On September 25, 1954, the assignment of third cook, waiter No. 2 as per bulletin No. 53 (Employes' Exhibit "B" was cancelled (Employes' Exhibit "D").

Effective September 26, 1954, the Carrier regularly assigned a consist of crew for coffee shop cars on trains 3 and 4 of the waiter-in-charge and second cook, bulletin No. 103 (Employes' Exhibit "E").

served "from grill car menus such as those (then) in use." Similarly, "The practice is not inconsistent with the requirements of" the rules.

See, also, Award No. 5354, no referee, which holds:

"OPINION OF BOARD: Effective February 1, 1950 coincident with a change of menus, positions of Coach Cafe Cooks in buffet-lounge-car on Carrier's Trains Nos. 17 and 18, were abolished and positions of Waiters-in-Charge then in effect were continued. The Waiters-in-Charge were thereafter required to perform all service on these cars until April 29, 1950 when, due to another change in menus, the positions of Coach Cafe Cooks were reestablished.

"The Employes present two claims for determination. First, that Waiters-in-Charge be relieved of performing duties alleged to be properly those of Coach Cafe Cooks, and second, that the Coach Cafe Cooks named be reimbursed for time lost as a result of the abolishment of their assignments.

"As to the second claim, there is no definition of duties of Coach Cafe Cooks or Waiters-in-Charge 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.

"The Carrier has asserted and the Employes do not deny that it has many times in the past, and as far back as 1940, operated buffet cars with only a Waiter-in-Charge serving prepared sandwiches, coffee, etc., as in the instant case between February 1, 1950 and April 29, 1950.

"Under the facts in the instant case we find no basis for a sustaining Award."

And consider Awards Nos. 5308, 5309 and 5310.

This claim is no more than a thinly disguised attempt to draw artificial and unprecedented limitations upon the duties of waiters-in-charge. Heretofore, the Organization has ignored the traditional functions of waiters-in-charge and of second cooks, and has wholly disregarded the right of the Carrier to adjust service according to the demands of the traveling public. Instead, it has offered only vague assertions concerning a "combination of service" without offering a scintilla of support for its conclusion that more than one class of service was performed by the claimants.

There is no foundation for this claim either in the applicable schedule rules, the awards of this Division, past practice or common sense. It is entirely without merit and should be denied.

It is hereby affirmed that all data herein submitted in support of the Carrier's Position has been submitted in substance to the Employe Representatives and made a part of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Employes state:

"During the period from January 11, 1955 to May 24, 1955 coffee shop cars on trains 3 and 4, **when in service,** at all times

offered items of food including baked ham sandwiches, baked ham with cheese sandwiches, toast, cheese sandwiches and peanut butter sandwiches. Waiters-in-charge (Claimants) were required to make sandwiches, prepare food for sandwiches, wash dishes and perform side work regularly and traditionally performed by second cooks, as shown by Employes' Exhibit 'I' ". (Emphasis and parenthesis ours.)

It will be noted the above has reference to what is offered on the coffee cars "when in service." On February 1, 1955, the coffee car in question, as such, was taken out of service and used only as a dormitory car. Meanwhile as of January 11, 1955 the menu was changed so the services of a second cook were no longer required and his services were discontinued. Now it may be that some of the work previously done by the second cook remained until February 1st, but before Claimants could have any claim at all it would be necessary for them to segregate second cooks' work from their own, because Rule 39 (c) provides:

"When more than one class of service is performed on a continuous trip, each part shall be paid for at the rate applicable to it; * * *."

Certainly there is no showing that the Carrier violated Rule 39(c) as alleged in the claim.

Rule 43, the other rule alleged to have been been violated reads:

"The consist of crews will be determined by the Management consistent with service requirements, and the duties will be equitably assigned as between the members of the crew. Any special requirements on bulletined positions will be specified in the bulletin. Employes under this agreement will not be required to perform the duties of other classes of employes, other than under urgent or unusual conditions."

Under this rule Carrier has the right to determine the consist of the crews, "consistent with service requirements" and employes may be required to perform the duties of other classes in urgent or unusual conditions. These conditions must be determined by the Carrier, and in the record here we feel its determination was justified in view of the "drastic" falling off of business, and Rule 43 was not violated.

We think there is no basis for a sustaining award in this case and the claim should be denied.

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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May, 1959.