

Award No. 8885
Docket No. DC-8803

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, 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 A. Nowicki, second cook, and other employees similarly situated, for sixty six hours (66 hrs.) each, per trip, at current rate of pay for number of trips said employees were held off Coffee Shop Car assignment on Trains No. 3 and 4 between the dates of January 11, 1955 and May 24, 1955.

EMPLOYEES' STATEMENT OF FACTS: This claim is a companion claim to claim submitted by the Organization on the property of the Carrier on behalf of Waiters-in-Charge Paul Wood, Riley Gilchrist and other employees similarly situated. The statement of facts applicable to this claim is identical with the Statement of Facts contained in the submission of the claim filed for and on behalf of Paul Wood, Riley Gilchrist and other employees similarly situated. For a detailed exposition of the facts reference is made to the claim filed for and on behalf of named waiter-in-charge and other employees similarly situated. However, in order to facilitate the orderly progressing of the instant claim, that Statement of Facts will be briefly summarized here.

In June, 1954, Carrier assigned a steward, chef and one waiter as the crew consist for each of its Coffee Shop Cars. (See Carrier's Bulletin No. 52 dated May 26, 1954, Employees Exhibit A.) On June 11, 1954 a third cook and second waiter were added to the crew assigned to each of the Coffee Shop Cars. On September 23, 1954 the assignment of chef and waiter No. 1 in each of these crews was abolished. On September 26, 1954 the assignment of third cook and waiter No. 2 was abolished. Effective the same date, the Carrier assigned as crew for each of its Coffee Shop Cars, waiter-in-charge and second cook per its Bulletin No. 103 (Employees' Exhibit B). This assignment continued as the effective crew assignment until January 11, 1955 at which time the Carrier abolished the assignment of second cook, Coffee Shop Car, operating St. Paul to Spokane and return to St. Paul. (Employees' Exhibit C) Carrier operated Coffee Shop Cars with waiter-in-charge only until February 3, 1955 at which time it abolished Coffee Shop Cars from St. Paul, Minnesota to Spokane, Washington without service.

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

And the considered Awards Nos. 5308, 5309 and 5310.

In further support of carrier's position it was exercising its time honored prerogative of operating as economically as possible, as recognized in Rule 13(i), we direct attention to the fact that when the level of business again warranted full operation of a coffee shop car, it was returned to service with waiter-in-charge and 2nd cook. A varied menu, reproduced as Carrier's Exhibit H, was again offered to patrons of the carrier. This menu was similar in content and in the preparation of foods to the menu used prior to January 11, 1955. This restoration of service required that waiters-in-charge and 2nd cooks again be assigned to this car. On May 12, 1955, the carrier issued bulletin No. 44 advising dining car employes that the coffee shop car would go into service on trains 3 and 4 effective with departure of train No. 3 from St. Paul on May 24, 1955. Positions of 2nd cook and waiters-in-charge were advertised and opened to bid. (Carrier's Exhibit F). On May 25, 1955, the successful bidders were informed of their positions. (Carrier's Exhibit G).

Carrier has just recently submitted to your Board 15 copies of an Ex Parte submission which is directly related to this claim in case in which waiters-in-charge are contending they were required to perform 2nd cook's work after the 2nd cook's position was abolished January 11, 1955. As has been conclusively shown herein, 2nd cooks' duties ceased to be a necessary function in the operation of the coffee shop car on trains 3 and 4 between January 11, 1955 and May 24, 1955, and by the same token waiters-in-charge could not possibly have performed duties which were no longer existent.

This claim is no more than a thinly disguised attempt to include "expanded" and unprecedented functions within the duties of 2nd cooks. The organization has ignored the traditional functions of 2nd cooks, and has wholly disregarded the right of the carrier to adjust service according to the demands of the travelling public. Instead, it has made only the "thin" assertion that 2nd cooks "were held off coffee shop car assignment" which assertion carries the implication that this being "held off coffee shop car assignment" was improper. This claim is contrary to the schedule, to the awards of this Division, to past practice and to 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 employee representatives and made a part of the claim.

(Exhibits not Reproduced.)

OPINION OF BOARD: From a review of the record herein, the claim before us is predicated on the request of the named claimant, A. Nowicki and other employes similarly situated, for pay for all trips claimants alleged they were held off Coffee Shop Car, by Carrier, on Trains No. 3-4, between January 11, 1955 and May 11, 1955.

Claimants held positions of Second Cook prior to January 11, 1955, and contend that Carrier by discontinuing the assignments, did not abolish the duties, and required such remaining work to be performed by a Waiter-in-Charge, not an employe covered by the effective agreement applicable here.

Prior to the date the assignments were discontinued, the positions of Second Cook required the preparation of food, such as cooked and baked foods, as shown on menu, and prepared on the car by the assigned second cook. Following the discontinued assignment, sandwiches and beverages only were served on the car by a Waiter-in-Charge. On or about February 1, 1955, Carrier discontinued the position of Waiter-in-Charge, and no food or beverage of any description was served on the car although it remained as part of the equipment of the train; the car was used as a dormitory car for crew members. On May 24, 1955, Carrier reestablished the car for serving food, and assigned a Second Cook position as formerly.

The claims are progressed here on the theory that when Second Cook positions were discontinued, the work remaining such as preparing sandwiches, toast, washing dishes, etc., constituted work belonging to second cook position, but was performed by the Waiter-in-Charge. In Award No. 8828, this Division, a claim progressed by the Waiter-in-Charge, involving the same circumstances and facts as are here alleged, was denied by this Board. In that case the Waiters-in-Charge contended they were required to perform services previously performed by Second Cooks.

In the case here, the Second Cooks are contending Waiters-in-Charge were required to perform services inherently belonging to Second Cooks. The record here does not support such contention.

There is no convincing evidence in the record to show any violation of the provisions of the Agreement by the Carrier. Nothing in the Agreement supports the position that the Second Cooks had sole and exclusive rights to perform the work as alleged.

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 did not violate the provisions of the Agreement, and claims should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1959.