Award No. 9085
Docket No. DC-7308

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Ex Parte submission of the Brotherhood of Railroad Trainmen in—

Claim of Dining Car Steward, Northern District, standing to be used for service on Overland Limited, Train No. 27, in Coffee Shop Car, March 10, 11, 22 and April 8, 1952 for earnings he would have received if used for such service, in addition to all other compensation received for service performed on those dates.

SEE AWARD 7466 FOR STATEMENT OF FACTS AND POSITIONS OF THE PARTIES.

OPINION OF BOARD: The essential facts are simple and are not in dispute. From October 22, 1951 to April 10, 1952, Carrier operated, in addition to the regular dining car in charge of a Steward, another food car variously referred to in the submissions as a coffee shop car or snack lounge car, in its Trains 27 and 28, between Ogden, Utah and Oakland, California, to provide passengers with a less formal and less complete food service than was being offered in the dining car. The service was restricted to something less than full hot meal, consisting mainly of food that had been prepared beforehand for ready service. To provide that service the last mentioned car was regularly manned by a Waiter-in-charge, one Waiter and a Dishwasher. Since the rendition of this Board's Awards 493 and 5517, on this same property, the crew consisting of a Waiter-in-charge and one Waiter has been generally recognized as proper for the type of service here in question.

On March 10, 11, 1952, two additional employes (one Waiter and one Third Cook) were worked on the car in dispute between Ogden and Oakland. On March 22 and April 8, one additional Waiter was used. They were extra employes who, like the Waiter-in-charge, are members of the Dining Car Cooks and Waiters Union instead of the petitioning Organization, which represents Stewards on this property. The record shows that these extra employes had been used on other trains from Oakland to Ogden. Instead of deadheading back to their home terminal at Oakland, Carrier pressed them

into service for the return portion of their trip, for assisting the Waiter-in-charge and the other regularly assigned Waiter.

Petitioner thereupon contended that the Carrier's failure to assign a Dining Car Steward on those dates when the regular complement of the crew was increased, as aforesaid, was at variance with past practice and, therefore, constituted a violation of the Scope and other Rules of Agreement governing as to rates of pay and working conditions for the Steward's craft on this property.

Claim was timely made and was progressed to this Board in accordance with the Railway Labor Act, as amended. When the dispute first came on for decision the Board, by its Award 6680, dismissed the claim without prejudice on the grounds that a third party notice was required and had not been given, thereupon depriving the Board of "jurisdiction to proceed". The dispute was revived upon the property. Petitioner notified the third party of the pending dispute and again filed ex parte before this Board on September 13, 1954. Carrier duly answered and again raised jurisdictional and other procedural questions as part of its defense to the claim. In Award 7466, it was held that the Board, not the Employes, should have given notice of hearing to other interested parties, and the Board further held:

> "Hearing and decision on the merits deferred pending due notice to the other party or parties involved."

The record now shows all possible compliance with notice requirements of the Railway Labor Act as amended, and the Board's Rules of Procedure. Accordingly, the Board now has an opportunity to inquire into the merits of the dispute for the first time.

Carrier's first line of defense is that the claim is not timely, and, therefore, is barred by Item 7 of the Interpretation Agreement between the parties, dated January 4, 1950 involving Section 4 (c) Item 2, of the Agreement made at Chicago, Illinois, Dcember 12, 1947. That contention is not sound.

This is the same claim that was filed with Carrier on or about October 21, 1952; denied on or about November 14, 1952; followed, on November 18, 1952, by notice to the Carrier that proceedings for final disposition of the claims were being instituted by petitioner. The Agreement relied upon by Carrier does not require more and certainly it does not make either party to the Agreement accountable for protracted delays suffered account the Board's derelictions.

In the instant case, petitioner constantly has been knocking at the door asking to be heard. Account the Board's failure to give the notice (which the Board had insisted by its Award 6680 be given) until after the promulgation of Award 7466, no valid hearing date was scheduled before December 18, 1957, and now, several years later, disputants are about to hear from the Board, for the first time, whether, in its opinion, the Agreement by and between the parties was violated. The proceedings pursuant to Item 7 of the Interpretation Agreement, dated January 4, 1940, provide for "final disposition" of claim. It only is required of the employe or his duly authorized representative, that such proceedings be "instituted".

We hold that the proceedings were timely "instituted" and until it has been determined by this Board whether the Agreement was violated, there has been no "final disposition" of the claim. We now turn attention to the merits of the dispute.

The record here before this Board is unduly lengthy, repetitious and indulges irrelevancies. There is no clear rules support for the claim, nor is there that showing of a long recognized and mutually accepted practice that this Board sometimes has held is as much a part of working conditions locally as though there was a specific rule to cover.

Both parties argue for practice as related to a scope rule, but there is no scope rule as such in evidence. Rule 1 is a graduated pay scale based upon length of service for Dining Car Stewards and providing a rate of pay at the lowest place on the scale for Cafe Car Stewards. Rule 2 governs hours of service and time allowances. Rule 6 sets up an extra board to provide relief for regularly assigned Stewards and to protect extra service. Rules 8, 9 and 11 are all on the subject of seniority.

If there had been a Steward vacancy for the trip Ogden to Oakland account the regular Steward having been relieved or account extra service being put on, the service could and should have been protected from the extra board at contract rates of pay by persons on the extra board account their seniority standing. So, the rules have an office to perform, but only if there was a need for a Dining Car Steward under the confronting facts and circumstances. It is no defense here, however, that Carrier did not have a Dining Car Steward at Ogden on dates involved in the claim, nor are we impressed that the extra Waiters were worked Ogden to Oakland, without need, instead of deadheading them to their home terminal. On the other hand, the Organization has not impressed us by its expressed fears that a denial award in this docket will open the flood gates for wholesale abuses. The protection against any such likely abuses can be supplied only by rules changes and negotiations on the property—not by this Board supplying a rule when none exists.

The real question before us, all else in the submissions notwithstanding, is what constitutes a proper crew consist in dining car service on the lines of this Carrier?

The dispute being grounded, as it is, in this Board's earlier Awards 493 and 5517, we must look to them to find the answer to the above question if we can. It remains to be seen what there is in denial awards upon which the Organization can draw for suppost of the pending claim.

Disputants are in some likely agreement that the type of food served and the equipment (car) are of no great consequence. All should be agreed that it is the need for the service that Stewards are under contract to protect which must first be determined. The need for dining car service is largely dependent upon demands of passengers. The basket lunch prepared by the passenger before starting his trip still is remembered by all, as is the "news butch"who peddled his wares throughout the chair car. The passenger, wanting something better, was willing to pay more as his ability to pay increased. The Pullman and the Dining Car were among the first luxuries of railroad travel, but as these conveniences or luxuries, as the case may be, became within the economic reach of the greatest number, demands of the public for these services increased. Outside the railroad industry the "quickie lunch" became popular as a hurried and economical meal. The railroads were forced to compete by putting on "snack cars" for feeding the greatest number with a minimum delay at reduced prices. The passenger does not need a Steward to help him obtain a sandwich or a cold drink and is not willing to pay the price. Consequently, the popular demand for Dining Car Stewards on all trains has decreased accordingly.

After the need for the service reasonably can be forecast or is in evidence, those entitled to perform the service, pursuant to contract with the Carrier, are then to be assigned. As between the competing crafts the choice, in the absence of a clearly defined scope rule, goes to those who are especially fitted according to peculiar skills, ability, and qualifications for traditionally doing the work. The Steward is traditionally a practiced employe fitted for more than menial tasks, and he might well consider it below the dignity of his calling to be classed as somthing else.

When, as here, local practice, custom and usage, at variance with the traditional work of a Steward, is relied upon in suport of claim to a position the Board must look with practiced eye to the proof relied upon.

With the foregoing general observations behind us, we now look to Awards 493 and 5517 to see what we can find therein to sustain the Organization's position. We find some likely admission by Carrier that, by reason of practice, it is under a duty, when more than two employes (including Waiter-in-charge) are regularly assigned to the table section of cars, as the normal crew consist, to likewise assign a Steward. Viewing the admission as being one against interest, as we find it to be, we should not and will not extend it beyond its clear import in connection with the service here in dispute. On that basis there is no merit to the claim, but the findings and award hereinafter entered are limited as to future application to the peculiar facts and circumstances here of record.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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