Award No. 9268
Docket No. DC-8970

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351
GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 351 on the property of the Grand Trunk Western Railroad Company that said Carrier cease and desist from failing to furnish complete uniforms required by Carrier to be worn by all classes of dining service employes represented by Organization under scope rule of current agreement in violation of Rule 8(g).

STATEMENT OF FACTS: Under date of January 21, 1956 Organization's General Chairman made explicit Organization's claim that Carrier was violating Rule 8(g) of the current agreement in not supplying employes with uniform Carrier required them to wear. (Employes' Exhibit A). On February 23, 1956 Carrier's Assistant Superintendent of Sleeping, Dining and Parlor Car Department advised Organization's General Chairman that Carrier was not in violation of agreement. (Employes' Exhibit B).

Under date of February 24, 1956 Organization appealed that decision to Carrier's Vice President and General Manager, the highest officer designated on the property of the Carrier to hear such appeals. (Employes' Exhibit C). Carrier's Vice President and General Manager declined the claim submitted on the property on March 27, 1956. (Employes' Exhibit D.)

Under date of April 9, 1956 Organization advised Carrier of its intention to progress the instant claim to your Board. (Employes' Exhibit E.)

It appears from the foregoing that Carrier required dining car employes to wear blue serge trousers not furnished by the Carrier together with a white washable coat furnished by the Carrier, as the uniform for dining car employes. Kitchen employes are required to furnish their own washable cotton trousers, either striped denim or white duck to be worn with coats and aprons furnished by Carrier.

The Carrier, since the adoption of Rule 8(g), has required the trousers mentioned above to be worn by kitchen and dining room employes as part of their uniform, but not refuses to furnish such part of said uniforms.

been understood, as applied to waiters' uniforms, to mean the white coat and apron described in the Statement of Facts. The request now made by the employes that the Carrier also supply trousers is not supported by the rule. In view of the fact that the rule does not specify any of the items to be supplied, it must be understood in the light of past practice by the parties. The present rule has been in effect since March 1, 1943, yet this is the first claim made by the employes for other than the standard items which have always been issued. Past practice shows that, insofar as waiters are concerned, the uniform provided by the Carrier under the terms of the Agreement is confined to the coat and apron, which have been supplied.

The claim should be denied as not supported by the Agreement.

This claim has been handled in the usual manner on the property up to and including the Vice President and General Manager, the highest officer designated to handle claims and grievances, and has been declined.

All data contained herein have in substance been presented to the employes and made part of the question in dispute.

OPINION OF BOARD: It is the Claim that the Carrier is violating Rule 8(g) of the controlling Agreement in failing to furnish complete uniforms required to be worn by all classes of dining service employes. The Claim is general but a letter from the General Chairman of the Organization to the Vice President and General Manager of the Carrier, of date April 9, 1956, during the progress of the Claim on the property, limits it to "waiters' trousers".

It is admitted that the Carrier requires dining car waiters to wear "dark blue or black trousers" in the service, which are not furnished by the Carrier. They also wear "white washable coats and aprons" which are provided by the Carrier.

The Organization claims that "waiters' trousers" are a part of the "uniforms" mentioned in the Rule 8(g). Carrier insists that only the "white washable coats and aprons" are the "uniforms" contemplated by the Rule and that this construction of the rule is required by long practice of the Carrier acquiesced in by the Organization under the present and former Rule 8(g).

Rule 8(g) invoked by the Organization reads:

> "Uniforms required by the Carrier will be furnished the employes without cost to him for same. The railroad company shall assume responsibility for the upkeep of all uniforms."

Carrier in its ex parte statement quotes Rule 8(g) as formerly effective:

> "The Company shall continue with its past practice of furnishing coats and uniforms."

As admittedly, the Carrier requires trousers of a certain color to be worn by its waiters in dining car service, there are but two questions presented by this record.

1. Are trousers by the applicable Rule a part of the waiters' "uniforms"?

2. Is the practice of the Carrier admissible in construing the meaning of the Rule?

The word "uniforms" has a well defined and commonly understood meaning, which, it must be presumed, was known to the parties when the Agreement was made. The fact that the language of the Rule was changed indicates a purpose to change its intent, otherwise it would have remained as it had formerly been written.

Obviously, the Carrier desired uniformity in the apparel of its waiters not only as to coats and aprons but also as to trousers. Conformable to this purpose, it required trousers to be worn of a certain color, "dark blue" or "black". This, in connection with the coats and aprons, accomplished the desired uniformity in appearance. Trousers were a part of the "uniforms" of the waiters while in the dining service, so recognized by the Carrier and directed by it to be worn.

The practice of the Carrier in construing the applicable Rule may properly be considered, from the language employe, if there is ambiguity or uncertainty in its meaning. We can not so find. The rule is clear and definite in meaning.

By the former Rule practice was written into it and would properly be permitted in construing it.

The identical question here propounded was presented, considered and decided in Award No. 7659, Livingston Smith, Referee. The only difference is that there, practice was not asserted as a defense to the Claim.

In the cited Award the Organization insisted that under the applicable Rule, practically the same as Rule 8(c) here, it was the obligation of the Carrier to furnish trousers to its dining car waiters. Carrier insisted, at length, that trousers were not a part of the uniform required. Upon this issue the Board said:

> "Here the wearing of white jackets and aprons, furnished and maintained by the Carrier, is mandatory. We believe that the specific designation of "dark blue trousers" by the Respondent made such apparel a part of the "uniform . . . . the use of which is required," within the meaning of Rule 22(b) at least, so long as this, or any other specific designation of apparel is maintained in force. In other words, Rule 22(b) means that when the Carrier required the wearing of dark blue trousers, such trousers became a part of the "uniform" to be furnished and maintained by them, however the Carrier may very properly limit their (trousers) wear and use to those periods when Claimants are in actual service, and not otherwise."

FINDING: 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 Employe involved in this dispute are respectively Carrier and Employe 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 has been violated.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1960.