Award No. 9269
Docket No. DC-8971

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: Joint Council Dining Car Employes Local 351 on the property of Grand Trunk Western Railroad Company for and on behalf of T. V. Perry; J. D. Johnson; D. Roese; H. B. Stone; V. Gaines; E. Taylor; John Wade; R. E. Mullen; H. C. Johnson; P. B. Jackson; James C. Cooper; Wendell Scott; B. St. Clair; A. L. Howard; H. Lowe; Winburn Lamiton, and other employes similarly situated; that said employes be paid the difference between what they were paid and what they should have been paid in regular assignment on Trains 15-6 from September 25, 1955 to July 15, 1956, on account of Carrier contracting to have said employes' duties and assignments performed by persons not covered by the scope rule of the current agreement.

STATEMENT OF FACTS: Under date of October 1, 1955 Employes' General Chairman filed time claim for and on behalf of claimants with Carrier. (Employes' Exhibit A). On October 10, 1955 Carrier's Assistant Superintendent Sleeping, Dining and Parlor Cars Department declined the instant claim (Employes' Exhibit B).

Employes' General Chairman appealed said declination to Carrier's Vice President and General Manager, the highest officer designated on the property to consider such appeals, on October 12, 1955. (Employes' Exhibit C). On October 18, 1955 that official held that the instant claim did not constitute a violation of the agreement. (Employes' Exhibit D).

Prior to September 26, 1955 claimants were regularly assigned on Trains 15-6 providing breakfast service to passengers from Battle Creek, Michigan to Chicago, Illinois. Effective September 26, 1955 Carrier contracted with the Pullman Company to have a Pullman club car included in the consist of Train 15 in which breakfast was served by Pullman Company employes. This situation prevailed until July 15, 1956 when Carrier discontinued use of Pullman club car and restored same service as existed prior to September 26, 1955 and reassigned claimants to their assignments as they existed prior to September 26, 1955.

At no time prior to September 26, 1955 or thereafter did the Carrier confer or negotiate with employes respecting cancellation of assignments of claimants on Trains 15-6 on September 26, 1955. On September 26, 1955 and

"With these facts in mind, we are of the opinion that under the circumstances of this case the work of this combination car, belonging to the Pullman Company and being done by Pullman employes could not be said to be covered by this Agreement which named Club Car Porters employed on Club Cars by Illinois Central Railroad Company."

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 matter in dispute.

OPINION OF BOARD: Claimants ask compensation for wages which they assert they have lost because the Carrier in violation of its Agreement had contracted with others to provide breakfast service to passengers of the Carrier.

The facts are that on and prior to September 26, 1955, four of the Claimants were Dining Car Stewards on Train No. 15, Battle Creek, Michigan, to Chicago and served breakfast on that train which was due to arrive at Chicago at 8:00 A. M. Effective September 27, 1955, this service was discontinued because of reduction in patronage. It was reinstated July 15, 1956, and again discontinued on September 5, 1956.

During all of the times heretofore stated the Pullman Company operated on Train No. 15, a Sleeping-Buffet Car and by its employes served breakfast on the Buffet Car.

It is the contention of the Organization that by virtue of the Scope Rule of the Agreement "Carrier has contracted to have all work of preparation and service of food on its lines performed by employes represented by the Organization". In other words, by contract with the Carrier the Organization had the exclusive right to do the work which the Pullman operatives did in preparing and serving meals on Train No. 15 from September 27, 1955, to July 15, 1956. This the Carrier denies.

It appears that during all the time involved in this Claim, long before and prior to the Agreement here invoked, the Carrier had a contract with the Pullman Company under which it operated its cars and, as a part of its service provided meals for passengers on trains of the Carrier including those wherein, during part of the time, it also provided dining car service. This cnotract with the Pullman Company must have been known by the Organization when it made its Agreement with the Carrier and the practice of the Pullman Company must likewise, have been known for years prior to the institution of this Claim. The employes who provided the dining car service with the Pullman Company were in the employ of that Company and had no contractual relation with the Carrier.

The Scope Rule of the applicable Agreement between the parties governs rates of pay, hours of service and conditions of the employment of all classes of Dining Car Department of the Grand Trunk Western Railroad Company, (with noted exceptions) and was effective January 31, 1938. This contract extended only to "classes of Dining Car Department of the Carrier" and did not purport to extend to or affect dining car service or the Dining Car Department of the Pullman Company with which the Carrier had a separate contract.

The contract between the parties to this submission does not purport to grant to the Organization the exclusive right to all dining car service conducted on its trains. Some of this service had been contracted for with the Pullman Company.

The facts devoloped do not sustain the Claim.

An Award in point, on principle, is No. 2325, Swaim, Referee, wherein the Claim of the Organization was basically, although stronger, the same as here. The Pullman Company was operating a Club Car and the service therewith which the Organization claimed, under the applicable Agreement, its members had the right to do.

In denying the Claim the Board said:

> "Here the Carrier and the Employes when they negotiated this agreement both knew and must be considered to have had in mind the relation between the Carrier and the Pullman Company. Both must be considered to have had in mind the fact that the Pullman Company employes furnished the service in their cars which they operated. There was apparently no desire nor intention on the part of the Dining Car Employes to cover work on Pullman cars where the Pullman employes were furnishing the service."

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 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 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 3rd day of March, 1960.