Award No. 9808
Docket No. DC-9394

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 370

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of JOINT COUNCIL DINING CAR EMPLOYES' UNION, LOCAL 370, on the property of the NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO. for and on behalf of George Johnson, Cecil Thorne and all other employes similarly situated be compensated for all pay lost account Carrier assigning junior employes to work on commuter lounge cars since on or about March 7, 1953; and that senior qualified employes be assigned to said positions from waiters' roster and present incumbents of these positions be returned to the positions in which they hold seniority as grill car bar attendants.

EMPLOYES' STATEMENT OF FACTS: On or about March 7, 1953, Carrier commenced operation of lounge cars on commuter trains between New York and New Haven, Connecticut. Since that date other cars have been added to the New York—New Haven runs. Carrier assigned grill car bar attendants to the positions in these lounge cars without bulletining the positions nor awarding them on the basis of seniority, ability and merit being sufficient.

Under date of January 17, 1955, Organization filed the instant claim herein. (Employes' Exhibit "A" attached hereto and incorporated herein by reference) Carrier denied said claim under date of January 26, 1955. (Employes' Exhibit "B" attached hereto and incorporated herein by reference)

Appeal was taken by the Organization to Carrier's Manager of Dining Service on February 2, 1955. (Employes' Exhibit "C" attached hereto and incorporated herein by reference)

On February 11, 1955, Organization advised Carrier of its further violation in arbitrarily hiring three new employes to perform the work of preparing drinks on commuter lounge cars and promoting two junior cooks to such position without bulletining the same and awarding them on the basis of seniority, ability and merit being sufficient. (Employes' Exhibit "D" attached hereto and incorporated herein by reference)

Under date of February 16, 1955, Carrier's Manager of Dining Service denied the claim. The same was appealed, on February 23, 1955, to Carrier's Assistant Vice President of Personnel, the highest officer designated on the

In the present case employes take the position Waiters-in-Charge should have been used. Carrier knows of no instance in which men of that roster have been used on cars having no food preparation facilities. As is probably well known, a waiter-in-charge is a working steward on Dining Cars on light runs where the complement of personal assigned is small. There is no logic to suggesting their use on a car devoted exclusively to beverage service.

On the other hand there is logic to support the use of a Bar Attendant. On grill cars this classification is in charge of beverage supplies and dispensing. Also, employes of this roster handle all cash receipts and accounting on grill cars. Like duties are performed on the cars here in question.

IV

In the final appeal on the property the General Chairman said:

> "Grill car bar attendants were hired as grill car employes, are restored as Grill Bar-attendants and therefore can accumulate and exercise seniority only within classification and on the type of cars for which employed and rostered"

The same reasoning would exclude waiters-in-charge from the cars now in issue. If Bar Attendants are hired strictly as grill car personal and have no roster rights on any other equipment, then by the same token waiters-in-charge are hired as Dining Car employes and have no roster rights on any other type of equipment.

The fact is that each payroll classification named in Rule 3 of the schedule has it own roster. Employes of one classification do not have any seniority rights in other classifications. Except as there is agreement with the organization (examples in Exhibits 3 and 4) there is no seniority right to work on equipment other than that named in Rule 3.

The claim is without merit and should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits Not Reproduced)

OPINION OF THE BOARD: On January 17, 1955, the Organization made claims on behalf of two named employes, and all other senior qualified employes, on the contention that on March 7, 1953, Carrier put into service equipment described as commuter lounge cars. That Carrier assigned employes to work such new equipment from the roster of soda men and bar attendants, under Grill Car classification as per Rule 3 of the Agreement, in perference to the rights of senior qualified employes holding rights under the Waiters' roster. The Organization relies on the provisions of Rules 10-12-13 to support the claims.

Carrier contends that such commuter lounge cars were put into service in March 1953, it put out a bulletin advertising the positions to employes covered under the Grill Car classification as set out in Rule 3 of the Agreement. Carrier also notes in the record before the Board, that the commuter-lounge cars were put into service on March 7, 1953, and such equipment was manned by

employes covered under the Grill Car classification, no claims or protests were lodged with the Carrier prior to the filing of claims with Carrier until January 17, 1955.

The Agreement before us makes no mention of a classification covering such positions as we have involved here, in reference to commuter lounge car equipment, There is nothing in the record here, to justify the claims as properly being positions belonging to waiters in the Dining Car classification, and not positions to be performed by Soda Men and Bar Attendants as employes holding within the Grill Car classification. The Agreement before us contains no classification as Commuter lounge car positions.

The record also discloses that the Orgaization made no protest or filed claims with Carrier between March 7, 1953, and January 17, 1955, when claims were first made as involved in this docket. The period of time involved to the date of making claim, must be regarded by the Board that the Organization had no objection to the action by Carrier for a period of nearly two years. During this period the Organization made no effort to protect its rights as it contends, and this Division has held that it is the duty of the parties to police their Agreements. We are of the opinion that the Organization should have, by proper procedure, taken steps to negotiate the matter pending here, but not having done so, cannot ask this Board to write a rule for them in support of the claims. This matter should have properly been negotiated between the parties, since we can find nothing in the rules to support the claims in reference to commuter lounge car positions. See Award No. 5079.

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 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 claims should be dismissed in accordance with the foregoing Opinion.

AWARD

Claims dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1961.