Award No. 10126

Docket No. DC-9473

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, 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 dining car cooks and waiters affected, represented by the Organization that they be compensated for eight (8) hours for pay for each trip of the train known and operated as "The Vacationer" between Boston and New York and return, since on or about December 16, 1954 and thereafter, on account of Carrier removing said work from said employes and assigning same to employes of another carrier all in violation of current agreement; and that Carrier, upon further operation of the said "The Vacationer" between Boston and New York and return, post for bid positions of cooks and waiters on said train and award the same to the senior eligible employes represented by the Organization as required by current agreement.

EMPLOYES' STATEMENT OF FACTS: On December 16, 1954, Carrier commenced operation of the train "The Vacationer" between Boston, Massachusetts and Florida jointly with the Atlantic Coast Line Railroad Co., the train operating on trackage of the Carrier between Boston and New York and return. The Carrier assigned performance of service of preparation and service of food to patrons over its line to waiters and cooks employed by the Atlantic Coast Line Railroad Co. to the exclusion of cooks and waiters covered by the agreement between Carrier and Organization.

On October 4, 1954, Employes' General Chairman communicated with Carrier's Manager of Dining Service respecting the proposed operation of "The Vacationer" and requesting advice that in the event that train was placed in operation, Carrier would assign the work to its employes and not to employes of another carrier. That communication is set out in full as follows:

In the interline service New York to Portland formerly operated with the Boston and Maine the entire dining operation over both railroads was handled by New Haven crews. The Bar Harbor Express running from Philadelphia to Maine has invariably had Pennsylvania dining cars from New York to New Haven on our lines. The Pullman Company has for over forty years crewed with its own employes all New Haven lounge and buffet cars it operates.

These examples — many more could be cited — demonstrate the absence of any schedule right of Employes to all dining or lounge car service on the New Haven. No apportionment agreement or other understanding has ever been made with the organization on the allocation of crews.

Carrier's sole purpose in negotiating as to the Florida run was to secure an equity for New Haven employes whose work opportunities are at their lowest ebb during the winter months. From the outset schedule obligation was specifically disclaimed. The fact situation and history detailed above evidence that this position was correct.

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The cars involved in this dispute were full lounge cars of the type usually found on through trains. They were fitted with lounge chairs, card and writing tables, and similar furniture for passengers. There was a small pantry or buffet used for preparation of beverages. No dining facilities were available in these cars. The bar attendant provided service, was in charge of supplies and responsible for accounts and receipts. A surety bond was required. The position called for qualifications not usually possessed by cooks or waiters.

The selection of employes from the bar attendants' roster to fill the assignments was based on past practice in the Dining Car Department. No record can be found in the entire history of the advertising of this type of position to waiters-in-charge.

The claim 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 BOARD: For a number of years following World War II, this Carrier, together with four other railroads operating on the Eastern Seaboard, ran a train named the "Vacationer" between Boston, Massachusetts and Miami, Florida. The equipment and crews for the four consists necessary for this operation were supplied by all of the participating Carriers. Included in each of the four consists were coaches, sleeping cars, a lounge car and a dining car.

Throughout the period of its operation, which ended with the season which began December 16, 1954 and terminated March 30, 1955, the dining car service on the entire trip was performed by Atlantic Coast Line crews. This included two dining cars owned by the New York, New Haven and Hartford Railroad Company. This Carrier also owned two of the lounge cars in this operation. And prior to this final 1954-55 season the other Carriers involved were opposed to any participation by the New Haven in either the dining or

lounge car personnel. It had been generally agreed by the several participating Carriers that, for uniformity of service, prices, etc., the Atlantic Coast Line personnel would perform the service from Boston and New York to Florida, irrespective of who owned the cars or whose lines the train was operating on.

However, early in the 1954-55 season, the participating Carriers agreed to certain changes which gave rise to the instant claim and that in a companion case now before us in Docket DC-9474. It was agreed that the two diners owned by the New Haven should be replaced by two lounge cars, also owned by this Carrier. And since this meant that all four of the lounge cars in the Vacationer belonged to this Carrier, it was agreed that these cars would be manned by personnel from the New Haven Railroad.

At the beginning of this, the final season of the Vacationer's run, this Carrier's Dining Car Employes notified the management that it would expect to service the dining cars on the New York to Boston part of the trip. The Carrier's failure to insist upon this work for its Dining Car Employes gave rise to the instant claim. And in the second claim now before us, (See Docket DC-9474) the Dining Car Employes for the first time asserted a claim to the positions of attendants in the lounge cars.

The present claim is based upon the fact that the dining cars on the Vacationer, regardless of their ownership, were being operated over the New Haven lines when running between New York and Boston and, therefore, this Carrier's crews, it is claimed, have the right under their Agreement with the Carrier to perform this service. The Employes cite their Scope Rule, Rule 1, Basic Month's Work Rule, Rule 6, Minimum Trip, Rule 10, Seniority, Rule 12, Bulletin and Displacement, Rule 14, Assignments, Rule 19, Vacations, Sections 1(a) and (b), and Rule 24, Termination. Our attention is also called to this Division's Awards 1252, 1295 and others.

In none of the previous awards relied upon by Claimants has this Board been confronted with the same kind of situation. Award 1252 is particularly stressed by the Employes; however, the facts were quite different in that case. And it is particularly noteworthy that the claim in that case was a timely one, whereas in the instant case the Atlantic Coast Line crews had been servicing the dining cars in each of the four consists involved, from the very beginning of the Vacationer's operation. Even though this had been the practice for a number of years prior to the adoption of the parties' 1953 Agreement, no protest was made until 1954.

Where certain working conditions have prevailed prior to the negotiation of previous Agreements, over a period of seven or eight years, without correction being made at the time of such negotiations, it is persuasive that the practice had not been regarded as a violation of the parties' Agreements then in effect. The working conditions which prevailed on the Vacationer prior to the effective date of the 1953 Agreement, where not changed by that Agreement, should govern with the same force and effect under the new contract. (See Fourth Division Award 752.)

In a previous case before this Division, involving the same parties, we quoted Award 4493 as follows:

> "The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its

terms, such practices are enforceable to the same extent as the provisions of the contract itself." (See Award 7910.)

Since this Carrier had no dining cars operating on the Vacationer during the period of its final season and subsequent to the filing of this grievance, this claim has even less merit than it might have had while this Carrier still had the two dining cars on the Vacationer.

The claim must be denied in accordance with Awards 2436, 4493, 7910, 1397, 7153 and others.

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 19th day of October, 1961.