Award No. 10127

Docket No. DC-9474

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 George Johnson and other employes similarly situated that they be compensated for loss of pay account assignment of junior employes to the position of bartender on lounge car on the train known as "The Vacationer" since on or about December 16, 1954, and thereafter; and that assignment to said job of bartender on "The Vacationer" be posted for bid and awarded to the senior qualified employe, the action of Carrier in assigning said jobs to employes junior to claimant and other employes similarly situated being in violation of the current effective agreement.

EMPLOYES' STATEMENT OF FACTS: On December 16, 1954, Carrier commenced operation of the train "The Vacationer" between Boston, Massachusetts and New York (the operation of this train was a joint operation with the Atlantic Coast Line Railroad Co., Carrier operates same between Boston and New York and Atlantic Coast Line Railroad Co. between New York and Florida). Prior to commencement of the operation of this train, Organization's General Chairman under date of December 14, 1954, requested that the assignment of personnel on the lounge cars of "The Vacationer" be posted for bid and assigned in conformity with memorandum of understanding between Carrier and Organization relative to the classification of waiter-in-charge. (Employes' Exhibit "A" attached hereto and incorporated herein by reference.)

Without regard to this request, on December 16, 1954, Carrier assigned employes junior to claimant to position of bartenders in the lounge cars on "The Vacationer." Under date of December 22, 1954, Organization's General Chairman filed the instant claim with Carrier as follows:

and Pennsylvania personnel operate through to destination in dining and lounge cars. Formerly through trains with dining service operated New York to Boston via Springfield jointly with the Boston and Albany. The crews of both companies operated through over each other's lines.

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.

III

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: This Carrier, in cooperation with other railroads on the East Coast operated a train known as the "Vacationer," seasonally for a number of years following World War II. Its run was between Boston, Massachusetts and Miami, Florida. From Boston to New York this train ran on New Haven lines; from New York to Washington over the Pennsylvania lines, from Washington to Richmond on the Richmond, Fredrickburg & Potomac; from Richmond to Jacksonville its run was on the Atlantic Coast Line;

and finally the run from Jacksonville to Miami was on the Florida East Coast. This was a through operation with four sets of equipment to which each of the five railroads contributed. 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 December 16, 1954 to March 30, 1955, the dining car service was performed by Atlantic Coast Line crews, including the two dining cars owned by the New Haven. This Carrier also owned two of the lounge cars in this operation. Shortly after the start of the 1954-55 season, the New Haven diners were withdrawn and two additional lounge cars were added. All four lounge cars were owned by this Carrier. The participating Carriers agreed that the New Haven crews should service all of the lounge cars in the pool. This required seven regular assignments as bar attendants.

The present claim arose when the Carrier assigned none of these positions to its dining car employes. All were assigned to those in the classification of Bar Attendants. And when the roster of attendants was exhausted and others added, the Dining Car Employes made the present claim on behalf of senior employes who were qualified as Waiter-in-Charge.

The record indicates that the Organization made no protest during the several years prior to 1954 when the dining cars owned by the New Haven and operated as part of the "Vacationer" were serviced by Atlantic Coast Line crews. Nor is there any indication that a claim was made on behalf of this Carrier's dining car employes to service its lounge cars on the "Vacationer" until the final season of its run, when the number of such cars was increased from two to four.

As we stated in Award 9808, involving these same parties, "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 positions within the Grill Car classification."

The Organization has failed to sustain the burden of proof that there has been a violation of the Scope Rule of the parties' Agreement. The claim must be denied.

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.