Award No. 10568
Docket No. DC-10033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 370, on the property of New York Central Railroad Company (Lines East) by and on behalf of J. Austin, John Fudge and C. Cooper and other employes similarly situated for each day or trip employes without Waiter-in-Charge seniority, or with less seniority within the classification of Waiter-in-Charge, are performing work rightfully that of claimants and other employes similarly situated on Trains 74, 73, 96 and 15 and other trains similarly situated, while claimants and other employes similarly situated are relegated to work as regular or extra waiters, and cooks' work under effective agreement is assigned to other employes; said contested assignments being made by Carrier in violation of effective agreement.

EMPLOYES' STATEMENT OF FACTS: Under date of February 27, 1957, Organization's General Chairman progressed the instant claim to Carrier's Superintendent Dining Service (Employes' Exhibit A). Under date of April 19, 1957, Carrier's Superintendent Dining Service denied the claim as presented and the request that cooks be assigned (Employes' Exhibit B).

The denial of the claim for pay for claimants and other employes similarly situated and that cooks be assigned (Employes' Exhibit B) was appealed to Carrier's Manager Dining Service, the highest officer designated on the property for consideration of such appeals on April 30, 1957 (Employes' Exhibit C.) Carrier's Manager Dining Service denied the claim on appeal under date of June 12, 1957 (Employes' Exhibit D).

The facts of the instant claim are relatively simple. Shortly prior to February 27, 1957, Carrier instituted a service of providing beverages, sandwiches and hot meals on cars which it chose to call Grill Lounge Cars. Attached hereto as Employes' Exhibit E is page 41 of Carrier's Time Table Form 1001 effective April 28, 1957. Although Time Table Form 1001 was effective April 28, 1957, the said service was employed by Carrier in prior effective Time Tables.

This service was offered patrons pursuant to menus attached hereto as Employes' Exhibit F, G, H, and I respectively. The cars on which this service was offered were cafe cars. Carrier acknowledges this fact as evidenced in

apply as long as the preponderance of work was connected with the service of beverages."

Attached hereto as Carrier's Exhibit A is statement showing distribution of revenue derived from operation of these tavern-lounge cars on trains 96, 15, 74(52) and 73(43) during the period from February 19 through October 31, 1957*. It will be noted that in every month the preponderance of the business consists of the sale of beverages, as distinguished from food service. This being the case, Carrier was clearly required under the agreement to assign bartenders, rather than waiters-in-charge, to these cars.

It will be noted from Carrier's Exhibit D that the identified claimants do not have seniority in the bartender classification. Each of the successful applicants for the assignment covered by Bulletin No. 6 has seniority as bartender. Incidentally, as will be noted from Carrier's Exhibit C, all except L. D. Walker have seniority also as waiter-in-charge greater than that of Claimants Austin, Fudge and Cooper.

It should further be noted that nothing in the rules agreement precludes bartenders, who, like waiters-in-charge, are promoted from and hold seniority in the basic classification of waiter, from serving food items. On August 10, 1950, the Organization presenting this claim served a Section 6 notice requesting a rule requiring that waiters-in-charge be assigned to cars on which food is served and defining the work of bartenders as "The preparation, mixing and serving of all alcoholic beverages and soft drinks". A copy of their request, which was denied in handling on the property, is attached hereto as Carrier's Exhibit K.

CONCLUSION

Carrier respectfully submits that its action in assigning the positions involved in this claim to employes holding seniority in the classification of bartender was in accordance with the agreement; further, that the claim of the employes is without merit and should be denied.

All the facts and arguments herein presented were made known to the employes during handling of the case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the claim of Organization that prior to February 27, 1957, Carrier instituted a service of providing beverages, sandwiches and hot meals on cars forming a part of Trains 74, 73, 96 and 15 and other trains similarly situated: Organization further claims that such cars are within the waiter-in-charge classification and are being operated with bartenders-in-charge and waiters and the further claim that such assignments are in violation of the Agreement between the parties.

Carrier denies the Agreement has been violated and claims that their assignment of the crews to the particular car involved are required by an amendment to the Rules, made between the parties July 6, 1948, and effective July 16, 1948.

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*Difference in figures for March and April, as compared with those contained in Carrier's Exhibit H, Sheet 2, results from fact that the latter erroneously includes revenue on days when other types of equipment were operated in lieu of tavern-lounge car.

For further clarification of the operation of these cars, Carrier states that on tavern-lounge cars operated on trains 96 and 74 (or 52), it had, since October 28, 1956, "offered for sale to the public, in addition to the usual alcoholic beverages, pre-cooked hot meals, hot beverages and sandwiches. On train 73 (and 43) no hot meals were served, but hot beverages, doughnuts, sweet rolls and sandwiches were provided. Effective February 19, 1957, the service on the tavern-lounge car assigned to train 15 was amplified to include the pre-cooked hot meals, hot beverages and sandwiches offered on train 96 and 74.

No cooking whatever is performed on these tavern-lounge cars—in fact they are not equipped with kitchens. The hot meals and sandwiches served on trains 96 and 74 (and 52) are prepared in a stationary kitchen at Buffalo. The hot meals for train 15 are purchased from the Baltimore Hotel, New York City. The sandwiches for that train are prepared at the commissary in New York. The hot meals are packed at the facility where they are prepared in electrified "Multi-Meal" containers and delivered to the cars ready for service.

The tavern-lounge cars operated on these trains are equipped with completely automatic, electric coffee dispensers which use a frozen coffee concentrate. No coffee is brewed on the car.

The particular rule involved here in a "Memorandum of Agreement" between the parties entered into on July 6, 1948, the pertinent part therof reading as follows:

> "MEMORANDUM OF AGREEMENT BETWEEN THE NEW YORK CENTRAL RAILROAD (LINE EAST) AND ITS EMPLOYES REPRESENTED BY LOCAL 370, HOTEL AND RESTAURANT EMPLOYES' INTERNATIONAL ALLIANCE
>
> The parties herto agree, effective July 16, 1948, to amend and amplify agreement dated January 1, 1942 (as heretofore amended as follows:
>
> The following rates of pay shall be applicable to employes operating tavern lounge or club lounge cars where the preponderance of business conists of the sale of beverages as distinguished from food service:

	Monthly Rate	Hourly Rate
Bartender	—$249.20	$1.03833
Lounge Waiter	— 210.00	.875

> Nothing in these rules shall be construed as requiring that the personnel of crews shall include employes of each of these classes.
>
> It is further understood that the rate of lounge waiter at $210.00 per month shall not apply to the Empire where a differential rate exists, nor shall it apply on twin-unit equipment which includes lounge facilities.
>
> Signed at New York, N.Y., this 6th day of July, 1948."

It is of no importance or significance that the cars involved may or might have been at times designated as a grill lounge or cafe cars. We believe that

the cars involved come within the meaning which the parties contemplated in their July 6, 1948 Agreement.

The question to be decided here is whether the preponderance of business on the cars named consisted from the sale of beverages as distinguished from food service. The record discloses that from February 19, 1957 through November 30, 1957, the total revenue Carrier received from operation of tavern lounge or club cars on trains specifically set forth in claim of Organization amounted to $85,872.00: of this amount food service amounted to $37,396.00 and sale of beverages or bar receipts amounted to $48,476.00. The bar service exceeded food service by $11,080.00.

Preponderance has been defined as "superiority of or excess in weight, influence, power, number, et cetera." Bouvier's Law Dictionary defines preponderance of evidence, as, "a preponderance which is apparent on fair consideration."

There is no question that the preponderance of business consisted of the sale of beverages as claimed by Carrier. Organization has failed in its proof of its claim.

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 27th day of April 1962.