Award No. 10600
Docket No. DC-10372

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

MONON RAILROAD

STATEMENT OF CLAIM: Time claim of Joint Council Dining Car Employes Union Local 351 on the property of Chicago, Indianapolis and Louisville Railway Company for and on behalf of A. Edwards, E. Sykes, E. Williams, J. Chester and other employes similarly situated, Trains 5 and 6, be paid the difference between what they were paid and what they should have been paid had their assignments not been disturbed, and further that this is a continuing claim designed to operate from the day on which the employes affected were removed from service until service of food and beverage is resumed Trains 5 and 6.

EMPLOYES' STATEMENT OF FACTS: On January 28, 1957, Organization's General Chairman filed the instant claim with Carrier's Superintendent Dining Car Department (Employes' Exhibit A). On February 5, 1957, Carrier's Superintendent Dining Service denied the claim (Employes' Exhibit B).

Under date of February 8, 1957, Organization appealed denial of the instant claim to Carrier's Director of Personnel, the highest official designated by the Carrier to whom appeals could be made (Employes' Exhibit C). On February 14, 1957, the appeal was denied (Employes' Exhibit D).

The facts in the instant claim are that on or about January 2, 1957, Carrier removed claimants from the regular service Trains 5 and 6. Simultaneously, Carrier installed automatic food and beverage dispensers on these trains. The fact is that Carrier did not abolish dining car service but only changed the type of service. Proof of this is contained in Carrier's admission that the change constituted a change in type of service. This admission is further stated in the fourth paragraph of Employes' Exhibit B.

Carrier must admit that the action herein complained of was unilateral. Carrier did not serve notice to change or modify the instant agreement in accordance with the Railway Labor Act as amended. The fact is that the working conditions of claimant and other employes similarly situated were changed by Carrier without its complying with the requirements of Section 6 of the Railway Labor Act, 45 U.S.C.A. 156.

In conclusion the Carrier submits;

(1) That the rules of the Agreement do not restrict the prerogative of the Carrier to discontinue dining car operation.

(2) That the rules of the Agreement do not restrict the right of the Carrier to equip their coaches with automatic food and beverage dispensers.

(3) That the rules of the Agreement do not require the Carrier to maintain dining car crew assignments on trains when and where dining cars are not operated, and dining car crews are not needed.

(4) That the employes' representatives failed to appeal to the Third Division within a reasonable time as contemplated must be done under the provisions of the Railway Labor Act, as amended.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to January 7, 1957, the Carrier operated combination dining-coach cars on Trains #5 and #6 operating between Chicago, Illinois, and Louisville, Kentucky. Dining car service was discontinued as of January 7, 1957. The combination dining-coach cars were replaced by regular coach cars which were equipped with "vending machines owned and operated by Dispens-O-Matic Company". These coin vending machines dispensed sandwiches, coffee, milk, candy and cigarettes. The change in dining facilities on these trains were bulletined "about ten (10) days before the change was made." It was also discussed on the property between the Organization and Carrier representatives.

The Organization contends that "the Carrier did not abolish dining car service but only changed the type of service," that the Carrier failed to serve proper notice under Section 6 of The Railway Labor Act, and that the Carrier violated Rule 24 of the Agreement.

The claim is on behalf of four employes. Two of them were cooks and two were waiters. Each dining-coach car was operated by one cook and one waiter. There is no dispute that the Claimants were employes within the Scope Rule of the Agreement.

On January 28, 1957, Mr. W. S. Seltzer, General Chairman of the Organization wrote to Mr. Don Ferrik, Superintendent, Dining Car Department, in part as follows:

"On or about January 2, 1957, Dining Car employes whose title appear in the scope rule of the existing agreement between your company and this organization were removed from regular service, your carrier, on train #5 and #6. Substituted in their stead you installed an automatic food and beverage dispenser without notice to the rep-

resentatives of your employes or to the employes as provided for in the last paragraph of rule 24 of the existing agreement effective September 8, 1950, as well as the Railway Labor Act, as amended. . . ."

Mr. Ferrik replied on February 5, 1957, in part as follows:

"You assert in your letter that we are in violation of Rule 24 the current Agreement in installing automatic food and beverage dispensers in lieu of the dining service formerly provided on some of our trains.

"The inauguration of dining service, its continuance, discontinuance, determination of the type of service to be furnished on certain trains are a matter of managerial prerogative. The rules of our cur rent Agreement, including cited Rule 24, do not preclude nor restrict management's right to substitute automatic food and beverage dispensers in lieu of relying on manual dispensation of food and beverages."

This correspondence, fully set out in the record, clearly establishes the fact that the conventional dining service on trains #5 and #6 were abolished. The Carrier did install automatic food dispensing machines which did not require the services of the employes represented by the Organization.

There is nothing in the Agreement which prohibits the Carrier from installing labor saving devices and from abolishing positions which are no longer needed. We have repeatedly held that the Scope Rule has not been violated when this takes place. See Awards 6416 (McMahon), 9333 (Weston), 9611 (Rose), 9610 (Rose) and 3051 (Carter). In Award 3051 this Board held that "the installation of labor saving machines and devices cannot be construed as taking work from the scope of the Agreement."

We held in Award 10200 (Gray) that the Carrier had the right to eliminate cooks in dining cars and install automatic coffee makers. While the facts in this case are not identical in every respect, the principle is the same and we see no reason why this Award should be overruled.

The Organization's contention that the Carrier failed to serve proper notice under Section 6 of the Railway Labor Act and that the Carrier violated Rule 24 of the Agreement is without merit. Section 6 of the Railway Labor Act provides, in substance, that the Carriers or the representatives of the Organizations "shall give at least thirty days written notice of an intended change in Agreements affecting rates of pay, rules, or working conditions. . . ." Abolishing of the dining car service on trains #5 and #6 is not such a change in the Agreement affecting working conditions which requires 30 day notice prescribed in the Act. Certainly, the Organization could not complain if the Carrier abolished dining car service on those trains and installed no automatic

food vending equipment. Installation of such automatic food vending equipment does not alter the situation. Concurrently, it must be admitted that the type of food and drink dispensed by the automatic food vending machine, is the same type of food and drink which may be dispensed by "Butcher Boys" who frequently apply their trade on trains.

The Organization emphasizes and relies on the decision of the Circuit Court of Appeals for the 8th Circuit in the case of Rolfes vs Dwellingham 198 F 2d 591. The Court held in that case that the Carrier could not remove waiters-in-charge and assign their duties to dining car stewards. This, the Court held, is a change in working conditions which requires the 30 day notice under Section 6 of the Railway Labor Act. It should be noted that the position was not abolished — it was merely an attempt by the Carrier to transfer work from one classification under the Scope Rule to another classification. The Court found that a jurisdictional dispute existed and that the Carrier wrongfully discontinued the service of one class of its employes and transferred that work to members of another class of its employes.

Rule 24 of the Agreement merely provides that the terms thereunder "continue in effect until changed or notified in accordance with the Railway Labor Act, as amended". This does not in any way prevent the Carrier from eliminating jobs or installing automated equipment or in any way transfer duties which are not contrary to the specific conditions of the Agreement.

More important, the Court said in the Rolfes case, "in this case the trial court exercised its equity powers only to preserve the status quo ante of the waiters-in-charge in relation to the railroad and the dining car stewards and granted injunction releasing 'any aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act: . . .' the court left the 'determination of the question whether the plaintiffs or the dining car stewards are entitled to the jobs in question under the agreements involved and other applicable facts to be made by the Third Division of the National Railroad Adjustment Board.'"

The question concerning the installation of the automatic food vending machine is before the Board for determination, and this Award shall be precisely and solely on that subject.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.