Award No. 10608
Docket No. DC-10085

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, 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 the New York Central Railroad, hereafter referred to as the carrier, for and on behalf of Cooks J. Jackson, W. Brazille and J. McClendon; Waiters Sidney Gore, C. N. Hart and H. Elliott and all others similarly situated, arising out of violation by the Carrier of Rules 4(a), 4(b) and 4(g) and claiming that cooks' and waiters' positions on Train 48 (The Detroiter) be posted for bid in New York City and awarded to claimants, that they have their vacation rights adjusted and that they be compensated retroactively for all time on Train 48 allotted to employes of time on Train 49 alloted to employes of seniority districts other than New York.

EMPLOYES STATEMENT OF FACTS: Train 48, the Detroiter, operated from Detroit to New York. For many years prior to October 28, 1956, bids for positions in the dining cars were advertised in the New York Seniority District. Commencing October 28, 1956, the Carrier, without the consent of Local 370, transferred the bids to the Chicago Seniority District and to employes not covered by the agreement between Local 370 and the Carrier. Since that date, all bids for dining car positions on Train 48 have been advertised in Chicago.

Local 370 protested this unilateral action of the Carrier in removing work which for many years had been assigned to the New York Seniority District and assigning it to another seniority district. On January 14, 1957, the Local Chairman filed a time claim for employes adversely affected by loss of work in the New York Seniority District (Employes' Exhibit A). The Superintendent of Dining Service denied the claim (Employes' Exhibit B). On March 19, 1957, the General Chairman of Local 370 appealed the decision denying the claim to the Manager of the Dining Service Department, the highest officer on the property to consider such appeals (Employes' Exhibit C). On May 6, 1957, that official denied the appeal of the claim (Employes' Exhibit D).

The Carrier's excuse for its unilateral action was that Train 48 had been combined with Train 8 on the Detroit to New York run. These facts, however, are as follows:

statute, then the notice contemplated by Section 3, First (j) of the Railway Labor Act must be given Local 233.

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: Prior to October 28, 1955, the home terminal for Train No. 48 operating between Detroit and New York was New York City. The home terminal for train No. 8, operating between Chicago and New York, was Chicago. Cooks and waiters on train No. 48 held their seniority in New York and those on train No. 8 held their seniority in Chicago.

Effective October 28, 1955, trains 8 and 48 were combined from Detroit to Chicago. The New York dining car on train 48 was discontinued and the positions of the dining car employes on that train were abolished. Only the dining car operating on train 8 from Chicago to New York continued to provide service from Chicago to New York.

The record does not sustain the Organization's contention that the Carrier abandoned train 8 east of Detroit and continued operating Train 48 Detroit to New York. On March 4, 1957, Mr. T. H. Byrne, Superintendent of Dining Service wrote to Mr. Percy Goodwyn, Local Chairman, in part, as follows:

> "As to train 48, you are aware, I am sure, that since October 28, 1956 trains 8 and 48 have been combined east of Detroit, Mich. Prior to that date, the dining car on train 8 had been operated from Chicago to New York by dining car employes whose home terminal is Chicago, Ill., and whose working conditions are covered by agreement with Local 233. The dining car operated on train 48 from Detroit to New York had been staffed by dining car employes working out of New York. After October 28, 1956, a single dining car was sufficient to provide service on the combined train. We therefore continued to operate the Chicago car from that point to New York and discontinued operation of the New York car from Detroit to New York. This action in no manner violates the agreement with your organization."

The pertinent issue is not whether the Carrier abandoned Train 8 or 48. The issue is whether the Carrier had the right to abandon the dining car on one or the other trains when the two were combined. We have consistently held that the Carrier has that right. In Award 10607 we discuss this principle in more detail. It is applicable in this case. The Carrier had the right to abandon the diner on Train 48 and abolish the positions of the crew members when that train was combined with Train 8.

On October 3, 1949, Local 370 and Local 351 (predecessor to Local 233) of the International Organization and the Carrier entered into an agreement which conferred jurisdiction of the dining car employes on Train 8 and 17 to Local 351 (now 233), Chicago District and on Train 65 and 66 to Local 370, New York District. This agreement gives the Organization no rights to dining car employes on Train 48.

Even if the dining car was on Train 48 instead of Train 8 the Organization would still have no exclusive rights to the dining car employes. This seniority principle is fully discussed in Award 10607.

Local 233, Joint Council Dining Car Employes was found to be involved in this dispute and was, accordingly, afforded an opportunity to be heard as provided in Section 3, First, (j) of the Railway Labor Act. On December 12, 1961, the Joint Council Dining Car Employes Union advised the Secretary of this Division that Mr. L. I. Lyman, General Chairman of Local 233 will represent that Local to the Board hearing.

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.