

Award No. 11072

Docket No. DC-10579

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Dining Car Steward C. L. Davis, March 1, 2, 3, 1958; Dining Car Steward A. J. Wilkinson, March 2, 3, 4, 1958; and Dining Car Steward S. K. Robbins, March 3, 4, 5, 1958, for time lost on these and all subsequent dates account assignment of Stewards being discontinued on regular dining cars, Trains 7 and 8, and inspectors and waiters-in-charge used to perform the duties of stewards. Rules 1, 2 and 14 of Dining Car Stewards' Agreement and N.R.A.B., Third Division, Awards Nos. 1235 and 2533.

EMPLOYES' STATEMENT OF FACTS: Under date of February 18, 1958, the following bulletin (No. 1463) was issued by the Superintendent of the Dining Car Department:

"Effective with Train No. 7 departing Denver on Saturday, March 1, 1958, the position of Dining Car Steward will be abolished.

"Stewards on Trains 7 and 8 (7-1 & 8-2) may exercise their seniority elsewhere if they so desire."

Trains 7 and 8, known as the "Prospector," operate between Denver and Salt Lake City. Train No. 7 departs Denver at 5:55 P.M., arriving at Salt Lake City at 8:30 A.M. Train No. 8 departs Salt Lake City at 5:30 P.M., arriving Denver at 8:00 A.M. Dinner and breakfast are served on both trains.

Prior to March 1, 1958, three (3) stewards were assigned to the dining cars on Trains 7 and 8. Effective that date the steward's assignment was abolished on No. 7 and abolished on No. 8 March 2nd, and waiters-in-charge were assigned in lieu thereof.

The Carrier refers to the cars in question as "diner-lounge cars." They have an over-all length of approximately 90 feet and are equipped with full and complete kitchens located about midway in the car. At times one end of the cars is converted to a so-called lounge where beverages and liquors are served—formerly under the jurisdiction of a steward—and where passengers

All data in support of Carrier's position have been presented to the Employees and made a part of the particular question in dispute. The Carrier reserves the right to answer any data not heretofore presented by Employees.

OPINION OF BOARD: This case involves interpretation and application of an Agreement between Petitioner and Carrier, effective July 1, 1936. It appears from the record that this is the first time this Board has been called upon to interpret the scope of this particular Agreement.

This issue, succinctly stated, is whether a collective bargaining contract, in the railroad industry, binds the Carrier to assign the generally recognized work peculiar to the positions set forth in the Agreement to its employees in the named positions constituting the collective bargaining unit.

The facts are:

(1) Train 7 and 8, known as the "Prospector," operated by Carrier, run between Denver and Salt Lake City; each serves dinner and breakfast;

(2) Petitioner and Carrier entered into a collective bargaining agreement, effective July 1, 1936, with the recital:

"The following rules will govern rates of pay and working conditions of Dining Car Stewards."

(3) The dining cars on the "Prospector" have the pantry and kitchen in the middle of the car;

(4) From March 1 to June 18, 1958, Carrier, by unilateral action, removed the stewards from the dining car. The duties performed by the steward were, during this period, assigned, unilaterally by Carrier, to a waiter-in-charge;

(5) Carrier states that it placed a waiter-in-charge because the volume of meals had decreased to a point where it made one-half of the dining car a lounge; but, when the volume of meals increased it reinstated stewards on June 18, 1958;

(6) Petitioner avers that prior to March 1, 1958, there was always a steward on the dining car on the "Prospector." Carrier's response to this allegation is conflicting and confusing; at times it states that prior to March 1, the crew consisted of a steward, among others; and, at other places in its Submission and argument it states that waiters-in-charge were used prior to March 1, 1958. We credit the evidence submitted by Petitioner; and

(7) It is undisputed that all the duties performed by a steward continued in existence, on the "Prospector," during the period between March 1 and June 18, 1958; and, that these duties, during that time, were performed by a waiter-in-charge.

It is the pointed contention of Petitioner that so long as the duties of a steward were and are necessary to the operation of the dining car—though such duties may lessen in volume because of a decrease in the demand for meals—the Agreement obligates Carrier to assign the work to a steward in the manner prescribed in the collective bargaining contract. Throughout its case

Petitioner reiterates "that this claim is based solely on the operation of dining cars on which full course meals are prepared and served and Petitioner is not urging that stewards have prior seniority rights on snack cars, tavern or cafe cars . . ."

Carrier contends that the Agreement does not obligate it to assign the work to those within the collective bargaining unit of stewards represented by Petitioner as their collective bargaining agent; and, it is Carrier's unencumbered prerogative to assign such work to whosoever it chooses. Further, in the instant case, Carrier's decision to assign the work to waiters-in-charge was justified by economic considerations.

We will first dispose of Carrier's defense of economic justification. This Board's jurisdiction is limited, insofar as here material, to "interpretation or application of agreements." Railway Labor Act, Title 1, Section 3 First (i). The compulsions and economic effects of the Agreement are those bargained for and agreed to by the parties. This forum is concerned with the legal meaning of the Agreement. It has no jurisdiction to weigh economic consequences.

Next, we resolve the issue as to whether the Agreement binds the Carrier to assign the work usually and customarily performed by stewards, in its employ, to stewards.

The Railway Labor Act does not deal with a Carrier's assignment of work. This Board determines issues concerning assignment of work only from interpretation and construction of existing agreements between the parties in the light of the law of contracts plus history, tradition, and custom in the industry. In drawing conclusions that lie beyond the direct expression of the text, the Board resorts to elements known from and given in the text—conclusions which are in the spirit, though not within the letter of the text. Such conclusions have the same legal recognition as conclusions which are in the letter of the text.

There is an area in the administration of employee-employer relationships in which a carrier is free to operate without consultation with representatives of its employees. But, the exercise of management's prerogatives is subject to the employees' right to bargain collectively in areas covering rates of pay, rules and working conditions of the employees. In the case before us the Carrier and Petitioner have entered into a collective bargaining agreement covering rates of pay, rules and working conditions of stewards employed by Carrier. The Carrier argues that the Agreement is only applicable to stewards **when it chooses to employ them**; the emphasized words of limitation are not found in the Agreement. Otherwise stated, the Carrier asserts that it is free to decide whether it will assign the work of stewards to stewards or any other craft or class of employees it chooses. The authoritative precedents founded on the long history of collective bargaining in the railroad industry, the many Awards of this Board, and court decisions interpreting and applying collective bargaining contracts, are in opposition to the proposition advanced by Carrier.

In general, it is a well established principle of labor law that a collective bargaining agreement reserves to the employees in the collective bargaining unit the performance of the work of the positions within the unit when the employer requires the performance of such work. There may, of course, be expressed exceptions. In addition, there may be unstated exceptions which the parties can be found to have intended in view of history, tradition or custom. Here we find no evidence to support an exception, expressed or implied.

A collective bargaining contract which, absent expressed or implied exception, does not vest the right to the work, when required, in the employees within the collective bargaining unit would have form without substance. The work is the catalyst which gives substance to the Rules pertaining to rates of pay, hours of work, seniority, working conditions, etc. If the Carrier remained free to assign, unilaterally, the work to whosoever it chooses, crossing craft and class lines, the over twenty (20) Rules in the Agreement, here being interpreted and applied, would be for naught in that they would have meaning only at the whim of Carrier.

For the foregoing reasons we will sustain the Claim that Carrier violated the Agreement as alleged. As to making whole the Claimants named in the Claim for any loss of wages which they may have suffered because of the violation of the Agreement, we will order that each Claimant, respectively, be paid, by Carrier, such wages as each Claimant would have earned, absent the violation, less such wages as each Claimant, respectively, earned in the period from the date of beginning of the violation, relative to each, to June 18, 1958.

FINDINGS The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 violated the Agreement.

AWARD

Claim sustained. Monetary award to be computed as prescribed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.