

Award No. 11125

Docket No. DC-10731

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 495

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 495 on the property of the Chesapeake and Ohio Railway Company for and on behalf of William Carrington, James Carter, James Hill and all other employees similarly situated for Chef Cook's rate of pay while performing duties of Chef Cook as one employee in the kitchen, Diners 964, 969 and 972 on Trains 47 and 46, Charleston, West Virginia to Detroit, Michigan.

EMPLOYEES' STATEMENT OF FACTS: Under date of November 13, 1957, Organization filed the instant claim with Carrier's Superintendent Dining Section (Employees' Exhibit A). Under date of December 16, 1957, Carrier's Superintendent Dining Service Section declined the claim (Employees' Exhibit B).

On December 23, 1957, Organization appealed denial of the instant claim to Carrier's Assistant Vice President Labor Relations, the highest designated officer on the property to consider such appeals. After appeal conference held February 7, 1958, Carrier's Assistant Vice President Labor Relations declined the claim on appeal on March 19, 1958 (Employees' Exhibit C).

The facts in the instant case are very uncomplicated. On October 22, 1957, Carrier issued bulletin (Employees' Exhibit D) instructing position of pantryman on the diners mentioned above to "build fire in kitchen stove placing large stainless steel coffee pot full of water on stove" and "make coffee after water is boiling by using (1) bag of coffee to (1) gallon of water, filling coffee urn by using (2) bags of coffee and (2) gallons of boiling hot water permitting coffee to drain through coffee bag into urn. Drain off coffee through urn spigot, repouring same into coffee bag over coffee grounds one additional time. Remove coffee bag and grounds from urn rinsing same in clear cold water in preparation for next use."

It is obvious that the instructions contained in the bulletin attached hereto as Employees' Exhibit D over the signature of Carrier's Superintendent Dining Service Section required pantryman to perform duties in the kitchens of the diners involved in the instant claim.

POSITION OF EMPLOYEES: The current agreement between the parties, effective April 16, 1938, as revised, copy of which is on file with the Board, is

It is the Carrier's position that Rule 3 of the Dining Car Employees' Agreement quoted above was not violated for the reason that there were no employees performing the service as chef cook and that making coffee is not exclusively the work of a cook, therefore, the claim of the employees should be denied.

The evidence introduced in this submission has been previously discussed in conference, or by correspondence, with the representative of the employees.

OPINION OF BOARD: The dining crew on trains 46 and 47 consisted of a steward, chef cook, waiter and pantryman. Effective October 27, 1957 the chef cook and waiter were instructed to leave train 47 at Charleston, West Virginia. They remained there until train 46 arrived the following day. The full dining car crew served lunch and dinner on train 47 and breakfast and lunch on train 46. The steward and pantryman remained on trains 46 and 47 and were provided with sleeping accommodations.

The steward and pantryman served breakfast on train 47 consisting of hot coffee, cold cereals and pastries. On train 46 which left Detroit at 7:30 P. M., the steward and pantryman served cold sandwiches, fruits, salads, cold beverages and hot coffee.

On October 22, 1957 Carrier's Superintendent of Dining Service issued the following written instructions to all stewards and waiters:

"Effective Sunday, October 27, the Pantrymen on Diners 964, 969 and 972 on train #47 into Detroit and Train #46 out of Detroit will arrange the following:

- 1st. — Build fire in kitchen stove placing large stainless steel coffee pot full of water on stove for making coffee.
- 2nd. — Ice all boxes inside kitchen and pantry. Set up pantry for service.
- 3rd. — Set up tables in dining room with water bottles, sugar bowls, salt and pepper shakers on table cloths with linen napkins. Table silver to be served with passenger meals.
- 4th. — Make coffee after water is boiling by using (1) bag of coffee to (1) gallon of water, filling coffee urn by using (2) bags of coffee and (2) gallons of boiling hot water permitting coffee to drain through coffee bag into urn. Drain off coffee through urn spigot, repouring same in to coffee bag over coffee grounds one additional time. Remove coffee bag and grounds from urn rinsing same in clear cold water in preparation for next use.
- 5th. — All sandwiches and salads as listed on menu to be prepared and served upon request of our patrons. All service to be rendered in a very courteous and efficient manner."

Claimants, who were pantrymen claim they should be paid chef cook's rate because they performed kitchen duties. Rule 3 of the Agreement reads:

"When kitchen crews consist of (4) employees, they shall be classified as follows:

1. First or Chef Cook
2. Second Cook
3. Third Cook
4. Fourth Cook

When kitchen crews consist of (3) employees, they shall be classified as follows:

1. First or Chef Cook
2. Second Cook
3. Third Cook

When kitchen crews consist of (2) employees, they shall be classified as follows:

1. First or Chef Cook
2. Second Cook

When kitchen crews consist of (1) employee, he should be classified as follows:

1. First or Chef Cook

The above personnel of kitchen crews will not apply to lounge, buffet and sandwich cars in extra service."

It is the Employees' contention that Claimants were kitchen employees who were instructed to build a fire in the kitchen stove, make coffee and do other chores as described in the instructions of October 22, 1957. The Carrier has argued that making coffee is not such kitchen work contemplated in Rule 3 and the pantrymen should not be considered a one-man kitchen crew.

Employees rely heavily on the findings of this Board in Award 7869 (Smith). The Agreement involved in this Award contained a Rule similar to Rule 3 of the Agreement involved in the present dispute. In the former case, however, the Claimant was regularly assigned as a Second Cook. He claimed Chef's wages because he was the only employee in the kitchen. In that Award we said:

"It was pointed out that the Claimant, as a cook, could be assigned to no other portion of the Dining Car than the kitchen, and that the intention of the rule was to offer protection of higher compensation to a lower rated classification when required to perform the role and duties of a higher classification when no such higher classified employee was assigned."

We also said that:

"Where as here, it is determined that only one employe within the class standing alone, is required to be assigned; the employe must be designated as a Chef."

Here, the Claimants were not cooks of any grade, they were not in the cooks class contemplated in Rule 3. The Agreement covers:

Waiters-in-Charge

Chef Cooks

Second Cooks

Third and Fourth Cooks

Pantrymen

Waiters

"The dispute here is not similar to the dispute in Award 7869 because Pantry-men were not involved.

Did the Claimants as Pantrymen perform work of Cooks which would bring them within the meaning of Rule 3? We think not. The Scope Rule does not describe the duties of the employes in each of the classifications previously noted. We know only that Claimants made coffee. So do Waiters-in-Charge in some instances.

In Award 5354 a Waiter-in-Charge prepared and served sandwiches, coffee and other foods in a buffet-lounge car. The claim was for reimbursement to Coach Cafe Cooks who were displaced by Waiters-in-Charge. We denied the claims, without a Referee, and said:

"... there is no definition of duties of Coach Cafe Cooks or Waiters-in-Charge contained in the Agreement between the parties. Therefore, the actions of the parties over a long period of time is the best evidence of the intentions of the parties under the Agreement.

The Carrier has asserted and the Employes do not deny that it has many times in the past and as far back as 1940, operated buffet cars with only a Waiter-in-Charge serving prepared sandwiches, coffee, etc., as in the instant case between February 1, 1950 and April 29, 1950."

The Employes do not contend that only cooks always prepare coffee.

In Award 5307 (Robertson) we denied a claim on behalf of cooks who were displaced by waiters-in-charge. The latter served "sandwiches, prepared, packaged canned foods and bacon or ham and eggs." They also served drinks which, we must assume, included coffee. Since there were no cooks on board, the waiter-in-charge must have prepared the coffee. See also Awards 5308, 5309 and 5310 (Robertson) and Awards 8828 (Bakke) and 8885 (McMahon). The preparation of coffee is not exclusively the work of employes in the cooks classification.

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 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 did not violate the Agreement.

AWARD

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1963.