

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ralph D. McMillen, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Time claim Joint Council Dining Car Employees Union Local 516 on the property of Great Northern Railroad for and on behalf of Waiter-in-Charge Richard D. Hall, Chef Cook Richard Hennessey and all other employees similarly situated for the difference in pay between what they were paid and what they should have been paid in regular assignment on Trains Nos. 7 and 8 as Waiter-in-Charge and Chef Cook respectively for the month of October, 1956, and all subsequent months until such time as claimants are placed in regular assignment on Trains Nos. 7 and 8.

EMPLOYEES' STATEMENT OF FACTS: Under date of November 20, 1956, Organization's General Chairman lodged the instant claim with Carrier's General Superintendent, Dining Car Department (Employees' Exhibit A). That official of the Carrier forwarded the claim to Carrier's Assistant to the President—Personnel, the chief operating officer designated on the property of the Carrier to consider such matters (Employees' Exhibit B).

In order to protect the agreement Organization's General Chairman perfected Organization's appeal to Carrier's Assistant to the President—Personnel, the highest operating officer designated on the property to consider such appeals (Employees' Exhibit C). On April 5, 1957, Carrier's Assistant to the President—Personnel declined the claim on appeal (Employees' Exhibit D).

The facts in the instant claim are uncomplicated and, Employees believe not in dispute between the parties. They are as follows:

1. About the year 1930, Carrier established food and beverage service on its Trains Nos. 7 and 8 St. Paul to Winnipeg and return. This service was performed by Dining Car Department employees and the equipment included in the consist of the trains were combination cars, one-half sleepers and one-half cafe cars. A news-butch service had been established on these trains since their initial run.

2. In 1951, Carrier abolished dining car service on Trains 7 and 8 and

ganization was aware of this fact in 1952 when the Pullman Company exercised its contractual rights and decided to have Pullman employees perform the commissary service in the sleeping cars on Trains Nos. 7 and 8 which decision caused the Great Northern Railway Company to discontinue assigning its Dining Car employees to the sleeping cars to perform this food service work, yet the organization waited for four years before making a formal protest to this Carrier. In other words, the instant claim is simply an attempt on the part of the organization to persuade your Board to extend the scope of the agreements between Carrier and the organization hoping to gain additional work not rightfully belonging to Great Northern Dining Car employees and work which this Carrier is prohibited by contract to extend to its employees. Such an attempt of the organization must necessarily "fall by the wayside" for reason that it is not within the jurisdiction of any division of the National Railroad Adjustment Board; to write new rules for either the organization or the Carrier; to grant to the organization something which is not included within the confines of a collective bargaining agreement between the organization and Carrier; to extend the scope rule of a schedule agreement to embrace work not covered by the agreement and which work is properly that of employees covered by a schedule rules agreement, separate and distinct, from agreements in effect on this property.

In conclusion, Carrier submits that this claim of the employees is completely lacking in merit and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in the present claim are basically as follows:

1. About the year 1930, Carrier established food and beverage service on its Trains Nos. 7 and 8, St. Paul to Winnipeg and return. This service was performed by Dining Car Department employees and the equipment included in the make up of the trains were combination cars, one-half sleepers and one-half cafe cars. A news-butcher service had been established on these trains since their initial run.

2. On November 17, 1952 Carrier ceased to assign its Dining Car employees to these two trains and retained only the news-butcher service.

3. In October, 1956, Carrier restored dining car service on Trains 7 and 8. From the date in October, 1956, when such service was restored on Trains 7 and 8, it has been performed by Pullman Company employees, on cars which are under lease to the Pullman Company, in daily operation.

The Organizations basis for the claim: "The history of the operation of cars for food and beverage service in the consist of Trains 7 and 8 will reveal that Great Northern Dining Car Department employees have always been assigned to and performed this service. Your carrier's unilateral action of contracting with the Pullman Company to have Pullman Company employees take over these assignments and perform the duties, inherent to the employees represented by Local 516, violates the Scope Rules of our agreements. The question of jurisdictional lines is deeply involved in this case because our agreement provide for and govern Chefs, Cooks, Waiters-in-Charge, Waiters, Porters, Attendants et al performing service on Great Northern Trains."

The current waiters' agreement between the parties became effective May 1, 1950 and the Scope Rule thereunder is as follows:

"SCOPE

"Employees as herein referred to shall include:

- "1. Waiters-in-Charge, Buffet and Parlor Car Porters-in-Charge.
2. Observation or Lounge Car Attendants (except when such cars are manned by Barber-Stewards or contain sleeping accommodations).
3. Bartenders, when used exclusively in such capacity.
4. Waiters and Pantrymen.
5. Buffet and Parlor Car Porters.
6. Train Porters.
7. Dishwashers."

The current cooks' agreement became effective August 26, 1952 and the following is the Scope Rule:

"SCOPE

"Employees as herein referred to shall include:

- "1. Dining Car Chefs.
2. Second Cooks
3. Third Cooks

"Chefs and/or second or third cooks will be employed in dining cars, cafe-observation, and hotel cars, operated by the Company in accordance with the class of work performed and the requirements of the service. These rules shall not apply to employees on Great Northern business or private cars, nor to employees on foreign line cars which may operate over Great Northern rails in interline or special train service, but shall apply to employees on Great Northern dining cars operated on foreign lines for Great Northern account in interline or special train service."

The following is the Carrier's contention in the present claim:

"It is the Carrier's position that no violation of any schedule agreement between the Great Northern Railway Company and Local 516 has existed for the period of time between November 17, 1952, and the present time, account Carrier discontinuing to assign its Dining Car employees to Trains Nos. 7 and 8, and, further, that from October, 1956, to the present time, Pullman Company employees have been, and are, properly performing the commissary service on The Midland Hills and The Manitoba Club cars, which are under lease to the Pullman Company, and are in operation on Trains Nos. 7 and 8."

The required notice of the pendency of this dispute was given to the Brotherhood of Sleeping Car Porters and the Pullman Company, in compliance with the requirements of Section 3, First (j) of the Railway Labor Act. Both parties submitted written statements.

The Organization in support of their claim state that historically they have always had his work and in fact had performed this work on the trains in question for two years after the leasing agreement between the Great Northern Railroad and the Pullman Company.

The Organization cites Awards 6109, 6305, 3839, among others, to prove "that a Carrier cannot contract with outsiders for the performance of work which is of a kind and character covered by the effective collective bargaining agreement." The facts of those cases, however, are distinguishable from the present claim.

While the Carrier contends that the "Pullman Company employees are properly performing the commissarial service on the two Pullman leased sleeping cars." The Company also states: "By the terms of the Uniform Service Contract between the Pullman Company and the Great Northern Railway Company, effective March 23, 1949, this work by preparing and serving of food in these lightweight sleepers is properly that of Pullman employees since the Pullman Company leases these cars from the Great Northern Railway Company."

In the claim before us, we must look to the Scope Rules to determine whether or not the Agreement has been violated.

In the Scope Rule of the Dining Car Chefs et al, we find: "Chefs and/or second or third cooks will be employed in dining cars, cafe-observation, and hotel cars, operated by the Company in accordance with the class of work performed and the requirements of the service." The words "operated by the Company" certainly excludes the Organization from cars operated by the Pullman Company.

In the Scope Rule of the Dining Car employees it states: "Employees as herein referred to shall include" and we refer to Rule 2. "Observation or Lounge Car Attendants (except when such cars are manned by Barber-Stewards or contain sleeping accommodations.)"

The cars in this claim "contain sleeping accommodations," so it must follow there has been no violation of this Agreement. Awards 2325 and 9269 are germane to the present claim.

We find that the Scope Rules involved have not been violated, the claim must be denied.

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 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 5th day of March, 1963.