

Award No. 11210

Docket No. DC-13185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Protest and claim that the Lounge Car Attendant and/or Lounge Car Barman is a member of the Dining Car crew, under the supervision of the Steward in charge, in applying Section (c) of the Mediation Agreement of July 18, 1956.

EMPLOYES' STATEMENT OF FACTS: On or about January 6, 1961 approximately twenty regular stewards' assignments were abolished and waiters-in-charge were instituted in their stead. This matter was protested on the basis of being a violation of Sections (b) and (c) of the Scope Rule Agreement with the Stewards, dated July 18, 1956, inasmuch as most of the abolished assignments provided a lounge car, which employed one and/or two attendants, under the direct supervision of the steward which would, of course, be counted in arriving at the "six or more persons * * * (Six includes steward)" as shown in the Scope Agreement. Sections (b) and (c) read:

"(b) The title 'Dining Car Steward' shall be applied to all employees who are in charge of dining cars or each unit thereof in train service.

"(c) The term 'dining car' shall be applied to each car used for the purpose of serving or preparing and serving food and/or drink for sale, and employing six or more persons for this purpose. (Six includes Steward)."

During the conference at Superintendent Hillyard's office June 5-6, 1961, Mr. Hillyard advised that it was not the intention to include the lounge car, or attendants, as a unit of the Dining Car.

This dispute has been appealed and declined both by letter and in conference by Mr. G. J. Roche, the Dining Car Department's highest officer; therefore is properly before your Board.

POSITION OF EMPLOYES: It is the Committee's position that the lounge car and attendants are a unit of the Dining Car, under the direct supervision of the steward, and that there is no agreement with the Stewards' Organization providing that lounge car or attendant will not be included as a part of

ment of a third party. The protest and claim should be dismissed or denied for the reasons expressed herein.

All that is contained herein is either known or has been available to the employees or their representatives.

OPINION OF BOARD: On January 6, 1961, Carrier reduced the number of employees assigned to dining cars on some of its trains. Certain dining car stewards' assignments were abolished as a result. Protest was made by the Organization on the grounds that the trains involved carried lounge cars with one or two attendants assigned who should be counted as members of the dining car crews, thus requiring the re-establishment of the abolished steward positions.

Following mediation and negotiations, these parties entered into an agreement dated July 18, 1956, which was substituted for the then applicable Scope Rule. Paragraphs (b) and (c) thereof are quoted:

"(b) The title 'Dining Car Steward' shall be applied to all employees who are in charge of dining cars or each unit thereof in train service.

"(c) The term 'dining car' shall be applied to each car used for the purpose of serving or preparing and serving food and/or drink for sale, and employing six or more persons for this purpose."

On the same day, a supplementary letter agreement was signed and approved by the parties which contains the following:

"Provisions of paragraphs (b) and (c) of the revised 'Scope' rule will not apply to the following:

"Lounge cars, sleeping cars or chair cars where food, prepared in dining cars or elsewhere, is served;"

Respondent objects to the consideration of this claim on its merits because, it asserts, the precise claim before the Board differs substantially from the one handled on the property, citing Awards 10749, 10193, 9104, 8991. It appears, however, that Carrier knew, or ought to have known, what the claim on the property involved and the Organization's rationale in protesting "the application of Agreement of July 18, 1956 and particularly paragraph (c), inasmuch as the barman is a part of the crew working directly under the supervision of the Steward," (Ltr. July 10, 1961, General Chairman to Carrier's Vice President). It is also clear that the essential subject matter of the claim has remained the same. Accordingly, the objection is overruled. See Awards 3256, 5024 and 5445.

On the merits, the Board cannot agree with Petitioner's notion that because lounge car attendants are admittedly under the supervision of dining car stewards it necessarily follows that they are to be considered and counted as members of the dining car crew, where, as here, we are confronted with a clear and unambiguous rule which specifically **excludes** lounge cars from the coverage of the Stewards' Scope Rule. The exclusion obviously is meaningless unless it applies to those employees assigned to lounge cars. It is also without any force or effect if, as Petitioner asserts, a lounge car is a dining car within the meaning of the Agreement of 1956 and the letter of understanding which followed.

The Board necessarily assumes that the parties to these agreements knew what they were agreeing to do. Lengthy negotiations in this instance preceded the adoption of the language of the applicable rules. The language pertinent to the facts of this dispute clearly excludes lounge cars and lounge-car attendants from the Scope Rule.

The claim lacks support under the rules of the effective agreement and must, therefore, be denied.

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 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 13th day of March, 1963.