Award No. 11444
Docket No. DC-11102

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES' UNION LOCAL 351

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (PERE MARQUETTE DISTRICT)

STATEMENT OF CLAIM: Time claim of the Joint Council Dining Car Employees' Union, Local 351, on the property of Chesapeake & Ohio Railway Company (Pere Marquette District) for and on behalf of Hayes Fisher, who has been compelled to work the extra board or receive no employment whatsoever, as a result of the company's requirement in compelling Tavern Hosts to cook on Trains 11 and 12; that he (Hayes Fisher) shall be paid the difference between what he earned and what he should have earned since October 27, 1958 until November 26, 1958, and thereafter until such time as claimant has been rightfully assigned as Chef Cook on Trains 11 and 12. This is a continuing claim subject to the restoration of duty of claimant and the correction of the incorrect assignment and duties required of Tavern Hosts on the trains in question.

EMPLOYES' STATEMENT OF FACTS: On November 26, 1958, Organization's General Chairman filed the instant claim with Carrier's Superintendent Dining Cars (Employes' Exhibit A). Under date of December 19, 1958, Organization received copy of letter dated December 9, 1958, from Carrier's Superintendent Dining Service denying the claim.

On December 22, 1958, Organization appealed denial of the claim to Carrier's Assistant Vice President Labor Relations, the highest officer designated on the property to consider such appeals (Employes' Exhibit B).

Under date of January 5, 1959, Carrier's Assistant Vice President Labor Relations denied the claim on appeal (Employes' Exhibit C).

Under date of January 20, 1959, Organization's General Chairman wrote Carrier's Assistant Vice President Labor Relations further explaining the contractual basis of the claim (Employes' Exhibit D).

On February 4, 1959, Carrier's Assistant Vice President Labor Relations affirmed denial of the claim (Employes' Exhibit E).

On February 17, 1959, Organization's General Chairman notified Carrier that a decision on appeal on the property was not acceptable to the Organization (Employes' Exhibit F).

All data included herein have been placed before the Employes in handling this dispute on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The relevant facts are not in dispute. Prior to October 27, 1958, Claimant was assigned as Chef Cook on the dining car on Trains 11 and 12 operating between Grand Rapids and Detroit, Michigan. Effective October 27, 1958 the dining car was removed and, in its stead, a combination coach-club car was placed in service. At first a Tavern Host was assigned to service this car. Later a Hostess was added. Both positions are covered by the Agreement between the parties.

The Tavern Host and the Hostess served drinks, fruit juice, cold cereal, rolls, doughnuts, snacks, sandwiches and coffee. The coach-club car was equipped with a refrigerator, a beverage cooler, a coffee urn and dishwashing and storing facilities. A small electric stove was disconnected, covered over and not used for cooking purposes.

Petitioner argues that the work of preparing food did not disappear and that, under the Scope Rule, Claimant was entitled to the position in the coach-club car as Chef Cook.

Rule 1 — Scope reads:

> "The following rules will govern the rates of pay, hours of service and working conditions of hosts, assistant hosts, chef cooks, second cooks, pantrymen, kitchen attendants, hostesses, parlor car and chair car attendants employed on the dining cars, parlor cars and coaches operated by the Chesapeake and Ohio Railway Company, Pere Marquette District."

Petitioner agrees that this Rule does not define the duties of a cook, neither does it define the duties of other employes covered in the Rule. Petitioner contends, however, that the duty of food preparation by chef cooks has been established by long practice. We find nothing in the record to justify this presumption.

Rule 26 of the Agreement states:

"Rule 26 — Consist of Kitchen Crews

> "When four employes are assigned to a regulation dining car kitchen from a terminal, they shall consist of the following: (a) chef cook, (b) second cook, (c) pantryman, (d) kitchen attendant.
>
> "When three employes are assigned to a regulation dining car kitchen from a terminal, they shall consist of the following: (a) chef cook, (b) second cook, (c) kitchen attendant.
>
> "When two employes are assigned to a regulation dining car kitchen from a terminal, they shall be classified as follows: (a) chef cook, (b) second cook.
>
> "When one employe is assigned to a regulation dining car kitchen from a terminal, he shall be classified as a chef cook.

"This rule shall not apply to lounge-tavern cars or to cars of a similar type."

We have previously held that food served by Waiters-in-Charge or by a Steward or by a Pantryman did not violate the Agreement. Awards 5307 (Robertson), 5354 (without Referee), 5308, 5309, 5310 (Robertson) and 11125 (Dolnick). The preparation and serving of food is not the exclusive work of employes in the cooks classification. It depends on the contract terms, the kind of food prepared and served and the cooking equipment used. Each element is relevant in determining the issue.

Rule 26 of the Agreement involved in this dispute is much more specific than the applicable Rule involved in Award 11125. In the earlier case the Rule defining the complement of kitchen crews started out to read: "When kitchen crews consist of (4) employes . . ." etc. Rule 26 of the Agreement herein involved reads: "When four employes are assigned to a regulation dining car kitchen . . ." There is no showing that the coach-club car contained a "regulation dining car kitchen." In the absence of such evidence we are compelled to conclude that the facilities used to serve food and drinks did not constitute a "regulation dining car kitchen." (Emphasis ours.)

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 27th day of May 1963.