

Award No. 11739
Docket No. DC-10194

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: For and on behalf of Kenneth Mize, waiter, and other employes similarly situated on Trains 15 and 16 that they be compensated at the Buffet Attendants' rate of pay for all hours worked in performing service in the Tacoma Dome Car which was performed by Buffet Attendants prior to September 3, 1957.

EMPLOYES' STATEMENT OF FACTS: On August 30, 1957, Carrier issued its Bulletin No. 7-133 to Dining Car Stewards; 7-40 to Dining Car Chefs; 7-22 to Dining Car Waiters; and 7-48 to Buffet Attendants, attached hereto as Employees' Exhibit A. This bulletin announced that effective September 4, 1957 the Tacoma and Minneapolis Equipment on Trains 15 and 16 will operate in a consolidated section between Chicago and Minneapolis with one Diner. As a result of the consolidation, the Carrier announced that it was abolishing the operation of the three Dining Car crews operating between Chicago and Minneapolis and return and abolishing the then present operation of 10½ Buffet Attendants on the Tacoma Dome Car, Trains 15 and 16. It was further announced that on that same date the Carrier would assign three Dining Car crews to operate Trains 27-5-2 Chicago to Minneapolis and return and three Buffet Attendants to operate Chicago to Minneapolis and return on the Dome Car.

Under date of September 3, 1957, Carrier issued its Bulletin No. 7-137 to Dining Car Stewards and 7-23 to Dining Car Waiters, Trains 15 and 16, attached hereto as Employees' Exhibit B. That bulletin reads as follows:

"Effective September 4, 1957, out of Chicago, the No. 3 waiter from the Dining Car will be assigned for beverage service in the Dome Car between the hours of 11:00 A.M. until 5:30 P.M., and from 7:30 P.M. to 10:00 P.M.

"As no attendant will be assigned to Dome Car west of Minneapolis, the Waiter will handle all beverage service by getting the beverage from the Dining Car Steward with a check to cover, presenting check to guest according to current instructions.

Super Dome Car in Trains 15 and 16 between Minneapolis and Tacoma in both directions subsequent to September 4th, 1957.

In other words, the Waiter, as previously stated, performs no work in the Super Dome Car in Trains 15 and 16 between Minneapolis and Tacoma in either directions that a Waiter does not regularly perform nor is there any work performed by the waiter in the Super Dome Car in Trains 15 and 16 between Minneapolis and Tacoma in both directions which is not waiter's work. The waiter performs no service in the pantry, or in other words, he performs no buffet service.

As stated, during those periods when the Waiter from the Dining Car is not assigned in the Super Dome Car in Trains 15 and 16 between Minneapolis and Tacoma in both directions there is no beverage service provided therein.

The Carrier should once again like to point out that the seniority district of Buffet Attendants and the seniority district of Waiters were by Agreement consolidated, effective January 1, 1951, into one (1) seniority district and one (1) seniority roster.

On Train 15 from Minneapolis to Tacoma, and on Train 16, from Tacoma to Minneapolis effective September 4th, 1957, it will be understood that as of that date food service which the Buffet Attendant prepared in the Dome Car and for which he was responsible was entirely discontinued since which time there is no Buffet Attendant service in existence in the Dome Car on Trains 15 and 16 West of Minneapolis.

There is absolutely no merit in the instant claim, therefore, the Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

OPINION OF BOARD: The factual situation on which this claim is based is identical with the facts set forth and discussed in our Award Number 11738.

In view of our finding that the waiters assigned to the Dome Cars to handle the service of beverages since September 4, 1957, were not performing the work of Buffet Attendants any more than they had been at any time before that date, we have concluded that the agreement was not violated.

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.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.

LABOR MEMBER'S DISSENT TO AWARD NO. 11739
DOCKET NO. DC-10194

The majority decision in this docket is based primarily on certain misleading statements found in Carrier's "Reply to Employees' Initial Submission," and Carrier's Bulletin No. 3-21, Employees' Exhibit "J" in the record.

The Board states that the "Organization contends that the work of preparing and serving such beverages, including the preparation of mixed drinks to be served on the Dome car, is exclusively the work of Buffet Attendants," Exhibit "J" is then referred to so as to show that this service is not exclusively the responsibility of Buffet Attendants; that Stewards and Waiters-In-Charge are also charged with this responsibility. Finally, the Board finds that Waiters had been assigned to the Dome Car to handle the service of food and beverage, including mixed drinks, and that the only difference between the operation contested in this docket and the previous practices is that the Waiter, in the one instance, obtained the beverage which he served to the guest from the Buffet Attendant; whereas, in the instant Docket, the beverages are obtained from the Steward.

This reasoning of the Majority ignores several important facts. First, the Bulletin referred to restricts the responsibility of In-Charge employees to the preparation and service of beverages on the car to which they are assigned. Stewards and Waiters-In-Charge cannot be assigned to Dome Cars. Second, Waiters were only assigned to Dome Cars to assist the In-Charge employee assigned to that car, i.e., Buffet Attendants. When only one (1) employee is assigned to the Dome Car, he must be a Buffet Attendant. As a consequence, the statement that "waiters assigned to the Dome Car to handle the service of beverages since September 4, 1957, were not performing the work of Buffet Attendants any more than they had any time before that date," is clearly in error. Before September 4, 1957, he worked in the Dome Car under the jurisdiction of the Buffet Attendant. Now, he works in the diner under the jurisdiction of the Steward.

Should the Carrier have taken the Steward off the diner and allowed the Waiter assigned to the Dome Car to serve food and beverages to guests in the diner and obtained from the Buffet Attendant, the situation would be analogous. Under these circumstances, the Waiter and Buffet Attendant would clearly be performing work belonging exclusively to Stewards, and that is, the supervision and service of food and beverage in a car on which only a Steward can be assigned as the In-Charge employee. It necessarily follows that the service of beverage on a Dome Car by a Waiter assigned to a diner is no less a violation of the agreement, as service in the Dome Car must be restricted to employees assigned to that car. When there is only one employee assigned to a Dome Car, he must be a Buffet Attendant.

For the above reasons I dissent.

G. Orndorff