

Award No. 12028
Docket No. DC-11963

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES
Local 233

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 233, for and on behalf of Waiter A. Saunders, Cook G. Fallon, and other employees similarly situated on the property of New York Central System that they be compensated for all hours worked by Boston and Albany Railroad Dining Car employees on Train 27 and 28 between Albany, New York and Chicago, Illinois from October 26, 1958.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 22, 1958, Organization submitted the instant claim to Carrier (Employees' Exhibit A). Employees' Exhibit A lists all of the employees, in addition to the named claimants, who are similarly situated and for whom claim is made in the instant claim.

Under date of February 8, 1959, Carrier's Superintendent Dining Car Service denied the instant claim (Employees' Exhibit B). Organization promptly appealed the denial of the instant claim to Carrier's Manager Dining and Sleeping Car Department, the highest officer on the property to consider such appeal (Employees' Exhibit C), who declined the claim on appeal (Employees' Exhibit D).

As the factual background since the inauguration of dining service on Trains 27 and 28 is of vital importance to the resolution of this dispute, Organization details that history with particularity. The following facts are not disputed as appears from letter from Mr. L. B. Fee, Vice-President, Employee Relations, to Mr. E. C. Thompson, Executive Secretary, National Mediation Board, dated December 23, 1958 and attached hereto as Employees' Exhibit E.

Trains 27 and 28 were inaugurated approximately in the year 1942. Continually from date of inauguration to the present time, these trains have run Chicago-Boston and return. From date of inauguration to July 1, 1946 the crews assigned to dining cars in the consist of Trains 27 and 28 were

Employees, over the division of dining car crews operating on trains 27 and 28 between Boston and Chicago. This was the conclusion which the National Mediation Board reached when its services were requested in a dispute involving this work in 1952 by Local 351 (predecessor on the property of Local 233). In this connection, attention is directed to Carrier's Exhibit G.

When the present dispute arose, Carrier attempted at a meeting at which representatives of both Locals were present on October 13, 1958, to secure agreement between them but was unable to do so. (Carrier's Submission, sheet 8). It then continued in effect the practice which had endured for over 6 years and crews from the Boston District continued to perform the work they had been doing exclusively since May 26, 1952.

For the reasons set forth in Carrier's Position, which are briefed below, it is respectfully submitted that this claim should be denied on the merits:

1. The right to assign and distribute work necessary for Carrier's operations is within the province of Carrier's right to manage.
2. Carrier has not limited itself in the above respect by the provisions of the applicable collective bargaining agreement.
 - (a) Nothing in the applicable agreement gives claimants title to the work on trains 27 and 28.
 - (b) The agreements previously referred to dated January 1, 1942, as amended, do not set up seniority for employees on the basis of geographical territories.
3. The Boston District employees have performed this work exclusively since May 26, 1952.

However, if consideration of agreement between Respondent and Local 370, Joint Council Dining Car Employees, and practices thereunder is necessary to fulfill the purpose of the statute, then the notice contemplated by Section 3, First (j) of the Railway Labor Act must be given Local 370.

All the facts and arguments herein presented were made known to the Employees during handling of the case on the property.

Exhibits not reproduced.)

OPINION OF BOARD: The Claimants herein are members of Joint Council Dining Car Employees, Local 233 employed by the New York Central Railroad out of Chicago as cooks, waiters and related workers. The claim is for compensation for all hours worked by Boston and Albany Railroad Dining Car employees on Trains 27 and 28 between Albany, New York and Chicago, Illinois from October 26, 1958.

The Claimants contend that during the period from July 1, 1946 to and including May 25, 1952 a distribution of work between Boston and Chicago district employees on trains operating from Chicago to Boston was handled by agreement between the Carrier and Organization. Prior to that time the work was assigned exclusively to the Chicago district employees. In August 1951 a change in the schedule of dining car runs was put into effect and the Carrier by unilateral action assigned work on Trains 27 and 28 to Boston crews in violation of the agreement, and also in violation of the custom practice and usage on the property. However, the claim was limited to a period from October 1958 although the violations go back to May 26, 1952.

The Carrier contends that on August 27, 1951 the Organizations were notified of a change in Dining Car schedules. Agreement at that time could not be reached between the two local unions as to a division of the work so the Carrier alternated the work on Trains 27 and 28 between the Chicago and Boston districts. May 26, 1952 Carrier assigned the Chicago district to Trains 46 and 33 between Boston and Chicago. The service had just been resumed. Dining Car employes from the Boston district were assigned exclusively to Trains 27 and 28. At this time the Carrier was unable to conclude any agreement with the two locals and thus established the service as noted. In October 1958 trains serviced by the Chicago district employes was discontinued and the Boston district continued to service Trains 27 and 28 as no agreement could be arrived at. Furthermore, the Carrier contended that the Claimants have no agreement or rule to support their claim for an exclusive right to work on Train 27 and 28. Furthermore, the Boston district employes have exclusively performed this work since May 26, 1952.

Thus the question for determination is:

Do the Claimants have a right, since October 26, 1958, by agreement, rule, custom or practice to the work claimed on Train 27 and 28, on the property of the New York Central System, operating between Albany, New York and Chicago?

The claim resolves itself down to the question as to whether the Claimants have an agreement to, or custom and practice to support their claim to dining service assignment on Train 27 and 28. The general tenor of the record implies that in the absence of an agreement permitting it, Boston district employes have no right to perform the work as Chicago district crews had previously operated and manned the train since its inception.

An examination of the rules agreement on this property with either local imposes no limit to the distribution of available dining service work as between the employes of the several districts. Trains 27 and 28 have been operated by Boston district crews since 1952, approximately six years. This period of service would preclude the Claimants from proving that established practice, custom and usage resided with the Chicago district crews.

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 Employee 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 Claimants failed to prove any violation of Rules or agreement with the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.