

Award No. 13483
Docket No. DC-14785

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 374
THE TEXAS & PACIFIC RAILWAY CO.

STATEMENT OF CLAIM: *Claims of Joint Council Dining Car Employees Local 374, on the property of the Texas and Pacific Railway Company,*

(1) for and on behalf of Waiters M. C. Baily, Shannon Durkee and Leon Jefferson, assigned to Trains Nos. 21 and 22; Jessie Clark and A. C. McFadden, assigned to Trains Nos. 27 and 28, and all other employees similarly situated, that they be paid the difference between the waiter's rate of pay and the rate of pantryman for each trip Carrier fails to assign a pantryman to its Trains 21-22, 27-28, in violation of the Agreement;

(2) for and on behalf of Waiters M. C. Bailey, Shannon Durkee, Leon Jefferson, and all other employees similarly situated, that they be paid the difference between what they did and will earn and what they would have earned had Carrier assigned waiters and pantrymen to perform pantrymen's work on Trains 21 and 22, instead of Waiters-In-Charge, in violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 8, 1963, crew assignment on Carrier's Trains Nos. 21-22 and 27-28 (excluding kitchen personnel) consisted of one (1) waiter; one (1) pantryman, and one (1) waiter-in-charge. The current rates of pay for these employees, effective May 1, 1962 is \$446.93 for waiters-in-charge; 424.33 for pantrymen, and \$419.33 for waiters.

On or about the above date, Carrier abolished the position of pantryman on the trains in question. Carrier further, on the 3rd day of October, 1963, abolished the position of waiter on Trains 21-22, leaving a one (1) man crew, consisting of a waiter-in-charge on these trains. In this instance, unlike the September 8, 1963 abolishments, it was the lowest rated employee who was taken off the assignment.

Under date of September 16, 1963, Employees filed time claim on behalf of waiters assigned to Trains Nos. 21-22 and 27-28, requesting that claimants be paid the difference between the waiters rate of pay and the rate of a pantryman. (Employees' Exhibit "A".) Carrier responded to this letter on the 18th day of September, 1963 and declined the claim on the basis that the waiter-in-charge, and not the waiter assigned to the Trains were to do the

eggs.' They also served drinks which, we must assume, included coffee. Since there were no cooks on board, the waiter-in-charge must have prepared the coffee. See also Awards 5308, 5309 and 5310 (Robertson) and Awards 8828 (Bakke) and 8885 (McMahon). The preparation of coffee is not exclusively the work of employees in the cooks classification."

In the present case, there is no rule requiring us to have positions of Pantrymen on all crews or on any crew, and no rule defining the duties of a Pantryman when we do have one, and no practice to give him the exclusive right to do anything that has been required of the Waiters here in question. After the Pantryman jobs were cut off, the Carrier did not assign to Waiters any new tasks, which had not previously been performed by Waiters. There is simply no rule or practice to base this claim on, and no basis for contending that the agreement was violated by the events here in question.

In so far as the claim purports to be for persons not named, the Carrier protests that it cannot be sustained, as the Carrier cannot ascertain the identity of the proposed beneficiaries, nor the dates and amounts and issues in controversy, and that it should be dismissed, in any event, because the Union did not specify nor attempt to specify those matters in handling this case on the property.

Item 2 of the claim, as referred to your Board, appears to have been added to the case in transit, somewhere between Texas and Chicago, after it was last handled on the property. It was not presented to the Carrier, nor handled with the Carrier, and we are not even sure what it means or to what it refers. It should be dismissed in any event.

For the reasons stated above, and in the Awards cited, and by the Carrier in the attached Exhibits, the Carrier respectfully requests the Board to dismiss or deny all claims involved in this case.

(Exhibits not reproduced.)

OPINION OF BOARD: From an examination of the Record it appears conclusively that the claim set forth in Paragraph (2) of the Statement of Claim was not progressed on the property in the required manner in that it was neither presented to nor discussed with the Carrier on the property. For the foregoing reason that portion of the claim will have to be dismissed.

With regard to the claim presented in Paragraph (1), it appears that, prior to September 3, 1963, the crew assignments to Carrier's Trains 21-22 and Trains 27-28 consisted of one waiter, one pantryman and one waiter-in-charge. On September 6th, 7th and 8th, 1963, respectively, position of pantryman on the crews on Trains 21-22 was abolished, and the position of pantryman on Trains 27-28 was abolished at the end of the tours of duty on September 7th, 1963.

The position of pantryman is a higher rated position than that of waiter and it is the contention of the Claimants that if the Carrier was obliged to reduce the consist of the crews that the lower rated positions should have been abolished first and that this has been the practice on this property; that some of the duties of the pantrymen were assumed by waiters-in-charge and that such action was violative of the agreement because under Rule 8 waiters-in-charge were in a separate seniority class from pantrymen and that the employees of one seniority class cannot perform the duties of another seniority class—in substance, the Claimants contend that none but pantrymen may perform pantrymen's duties.

It is the contention of the Carrier that the reduction in the size of the crews was necessitated because of a decrease in business, that many of the duties of pantrymen and waiters had always been performed in common and any other duties of the pantrymen were reassigned to waiters-in-charge; Carrier further contends that neither by practice nor otherwise have specific duties been allocated to pantrymen or waiters.

There is nothing in the agreement between the parties hereto that prohibits the Carrier from reducing its forces. In fact, Rule 9 of the agreement anticipates there will be such reductions. As was stated in Award 10099 (Rose):

"It is well established that in the absence of prohibitions in the collective agreement, and subject to the requirements thereof, management may abolish positions which are not needed and rearrange the work to be performed by the class or classes of employees entitled to such work. See Awards 5331, 5664, 6184, 6187, 6839, 9806."

Nor anywhere in the instant agreement is there any rule which requires that in reducing the crew Carrier is obligated to discontinue the lowest rated position first. The Record doesn't disclose that such a principle has been applied as a matter of consistent practice on this property. This Board is powerless to supply a rule where none exists in the agreement.

There is no rule in the agreement, either, that defines the duties of pantrymen, waiters-in-charge or waiters, nor is there anything in the Record that lends any assistance in defining what their respective duties might be. Nor has any rule been cited by Claimants which prohibits a waiter-in-charge, a higher rated employee, from performing the duties of a pantryman.

Claimants have the burden of sustaining or proving their claim before this Board but an examination of the Record discloses they have totally failed to do so.

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 has not been violated.

AWARD

Claim (1) denied.

Claim (2) dismissed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1965.