Award No. 13902
Docket No. DC-15232

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 495

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 495 on the property of the Atlantic Coast Line Railroad Company, for and on behalf of Waiters L. Davis, M. E. Bryant, W. L. Carter, and all other employes similarly situated, that they be paid for the difference between what they earned in extra service and the monthly guarantee of 205 hours per month since May 20, 1963, account of Carrier assigning train porters to coach lunch service in violation of the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: The claim underlying this dispute was instituted by the following letter:

"December 16, 1963

Mr. J. B. Mashburn
Superintendent Dining Cars
Atlantic Coast Line Railroad
Jacksonville, Florida

Dear Sir:

This claim is for and on behalf of Messrs. L. Davis, M. E. Bryant, W. L. Carter, Waiters, and other employes similarly situated, for the difference in their earnings in extra service and what they could have earned in regular service on a guarantee of 205 hours per month, from May 20, 1963 until the Carrier bulletins and awards coach lunch positions for dining car waiters that were assigned to train porters on May 20, 1963. The Carrier violated Rule 3, Section (k) of the working agreement and Rule 22 of the Manual of Instructions for dining car employes.

Statement of Facts:

On May 20, 1963 the Carrier discontinued using dining car waiters and waiters-in-charge from handling coach lunch service on Trains 75 and 76 between Jacksonville, Florida and Florence, South Carolina

3. That in numerous awards all four Divisions have stated the burden of proof of a rule violation on which a claim is based rests with the claimant, and that the Organization has failed to meet this condition.

4. That the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 20, 1963, Carrier discontinued dining car service on Trains 75 and 76 and instituted lunch cart service. The food for the lunch cart was not prepared in dining cars. Prior to instituting the change Carrier entered into an agreement with The Brotherhood of Sleeping Car Porters, on April 10, 1963, providing for certain members of that Organization who were employes of Carrier and who were also assigned to the trains involved, to operate the lunch carts. The instant claim arose as a result of those mentioned employes being assigned to do the work involved. The Petitioner contends that its members should be assigned to operate the carts and alleges that as they are not so assigned Carrier is in violation of the applicable agreement existing between it and Carrier.

The record contains unrefuted evidence to the effect that on at least three occasions involving similar situations dating back to mid-1959, Carrier changed the food service on other trains in precisely the same manner as here and without objection from Petitioner.

When we view the rule reference of Petitioner in the light of the absence of a Scope Rule in the agreement and with what must be deemed tacit approval by Petitioner of Carrier's action, as described in the preceding paragraph, we would have reason for concluding that the instant work involved had not been exclusively contracted to Petitioner's members because there is neither direct language in the Agreement nor an opposite past practice or custom upon which to find otherwise. However, any possible reservation which we might have about denying Petitioner's request for payment of the wage losses of Claimants is allayed by reason of the language contained in Petitioner's letter and notice to Carrier of its desire to amend the agreement as provided in Section Six of the Railway Labor Act — quoted below — and by the fact that the notice was given prior to the change in the service.

"April 29, 1963

Mr. W. S. Baker
Assistant Vice-President
Personnel Department
Atlantic Coast Line Railroad
Jacksonville 2, Florida

Dear Sir:

Please accept this letter as the customary and required thirty (30) days' notice as provided by Section VI of the Railway Labor Act, of our desire to amend the existing agreement now in effect, to comprehend contemplated operation of coach lunch service on trains 75-76 by inclusion of said positions and service under the scope and other applicable rules of the agreement with Dining Car Employees' Union, Local 495.

Your expressed intent to assign these jobs to train porters, another craft and class, constitutes unilateral action to change rules

to govern wages and working conditions which is in conflict with the intent and purpose of the Railway Labor Act which requires and is subject to negotiation.

We, therefore, respectfully request a date, time and place for a meeting on the above subject consistent with your prior commitments but in conformity within the prescribed time limits.

Very truly yours,

/s/ F. C. Lindsey
General Chairman."

For the reasons given above we will deny the claim.

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 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 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 15th day of October 1965.