



Award Number 17920

Docket Number DC-18276

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—Dining Car Department—**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Atchison, Topeka and Santa Fe Railway Company, for and on behalf of Chefs Adolph Keaton, L. C. Cotton, Otto Burns and Ulysses S. Durden, that they be paid the difference between Class A Chef rates and what they were actually paid since May 15, 1968, account of carrier assigning Snack Car Attendants to its Trains 23 and 24 in lieu of Class A Chefs in violation of the Agreement between the parties.

EMPLOYEES' STATEMENT OF FACTS: Under date of August 20, 1968, Employees filed the following claim:

"Mr. John R. Baird, Superintendent
Dining Car & News Department
The Atchison, Topeka and Santa Fe Rlwy. Co.
2014 South Wentworth Avenue
Chicago, Illinois, .0616

SUBJECT: PROTEST AND TIME CLAIM

RE: Trains 23 and 24, Grand Canyon Limited

"Dear Sir:

"Be advised constitutes our firm Protest and Time Claim respecting your arbitrary assignment of Chef Cooks to perform service on such on Trains 23 and 24 (Grand Canyon Limited) under the classification of Snack Car Attendants resulting in a reduction of pay.

"The current working agreement between this Union and your Company covering hours of service, rates of pay and working conditions of the employees of your Dining Service who are members of this Union does not provide for the use of Snack Cars on Trains 23 and 24 with Class G pay rates.

"The history of Trains 23 and 24 reflects the use of a full size Dining and/or Counter Car. The wage appendix of the current working agreement between your Company and this organization states therein the rates of pay, as well as the class of service to be adopted and become a part on the train so indicated.

"With respect to Trains 23 and 24, effective rates of pay for Chef Cooks, Second Cooks and Third Cooks are the maximum rates of pay for each class of service in effect in the Santa Fe Dining Car service.

The records appended hereto provide unrefuted evidence to the effect that snack cars with snack car attendants were assigned on the responding Carrier's property as early as 1961 and food service was changed on other trains in the same manner as on Train 23-24 without objection by the Petitioning Organization.

However, on August 21, 1968, Carrier received joint letter from W. S. Seltzer, Financial Secretary and Treasurer and General Chairman, and H. L. Stevenson, President, Dining Car Employees' Union, Local 351, dated August 20, 1968 (Exhibit "K") establishing a protest and claim in behalf of four chefs, namely, Adolph Keaton, L. C. Cotton, Otto Burns, and Ulysses S. Durden, stating they were assigned to the extra board. The Carrier quotes that portion appearing on page two of said letter under the caption, "Time Claim".

"We demand your Company to pay the difference to the above named employees and all other's similarly affected, the difference in money that those individuals were paid by your Company, effective July 28, 1968 and what they actually would have earned had they been properly assigned to Trains 23 and 24 (Grand Canyon Limited). This Claim is to be construed as a continuing Time Claim to run concurrently with the Snack Car assignments in effect on Trains 23 and 24 (Grand Canyon Limited)."

At this point the Carrier respectfully advises the Board that A. Keaton, who holds seniority in the Snack Car Attendant class, was not, on the date of the claim, i.e. effective July 28, 1968, assigned to the extra board, but was regularly assigned by bid to the position of snack car attendant on Train 23-24. Obviously, the claim quoted hereinabove is completely vague and indefinite as to all others similarly affected and dates and that which represents the time claim. Also the claim as cited does not present proof of loss of wages of the four claimants and/or all others similarly affected.

Upon receipt of Superintendent Baird's letter dated September 13, 1968 (Exhibit "L"), Mr. W. S. Seltzer appealed the claim under date of September 20, 1968 to the Carrier's General Manager and Vice President, Mr. G. J. Roche, and requested conference date to discuss the claim (Exhibit "M"). Conference was held on Tuesday, October 1, 1968 pursuant to Mr. Seltzer's request.

On October 8, 1968, Mr. Roche confirmed the conference and advised Mr. Seltzer that the decision of the Carrier's Superintendent, Mr. John R. Baird, was sustained for the reasons cited in Mr. Bair's letter of September 13, 1968 which he reaffirmed. (Exhibit "N")

On October 10, 1968, Mr. Seltzer informed Mr. Roche of the Organization's intention to advance the matter to the National Railroad Adjustment Board for adjudication. (Exhibit "O")

(Exhibits Not Reproduced)

OPINION OF BOARD: Trains 23-24 are among the Class A trains in the Wage Appendix attached to and made a part of the Agreement. Dining car employees receive the rates of pay therein listed for the enumerated job classifications.

There is no question that these were at one time first class trains with pullman cars and conventional dining cars. Because of a sharp decline in passenger service, Train 23-24 was relegated to the status of a work train with one or two passenger coaches attached. Pullman service was eliminated and the dining car was removed on October 5, 1967. Arrangements were first

made for the train to stop at designated points so that passengers in the coach cars could obtain food. On May 15, 1968 snack car service was established doing away with meal stops.

Employees contend that the snack car employees are entitled to the Class A Chef rates instead of the Snack Car Attendant rates, as set out in Class G of that Wage Appendix, because "there is no other rate of pay applicable inasmuch as Trains 23 and 24 (Grand Canyon Limited) is a Class A train irrespective of the titles" applied thereto.

No evidence is offered disputing the fact that passenger service on train 23-24 dropped drastically and that the train no longer carries pullmans. No train food service of any kind was available to the coach passengers from October 5, 1967 to May 15, 1968.

There is no rule in the Agreement limiting Carrier's right to operate its trains. What may have been a Class A train at one time, may no longer be so in the future. It is solely the Carrier's prerogative to choose how and at what class a train may be operated. The designation of trains 23-24 (Grand Canyon) as Class A in the Wage Appendix can only mean that the rates of pay therein set forth are applicable only while that train operates in that category. When the train became a work train with some coach cars and with no regular dining car service, it no longer remained a Class A train to which those wage rates apply.

Snack car rates of pay are in Class G of the Wage Appendix. They are not specifically related to any type of train. Those rates apply to all trains operating with snack cars.

No evidence has been offered that the practice on this property puts an interpretation on the Wage Appendix different from what has been said here.

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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S.H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1970.