Award No. 18822
Docket No. DC-16388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES (AFL-CIO)

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: The claim of the Labor Organization is that::

1. The Carrier violated the Agreement effective March 16, 1948, and is continuing to violate it by assigning to Pullman employes working under another agreement work in the preparation and service of food on Trains 31 and 32, the "National Limited."

2. Dining car employes coming under the Agreement are entitled to be paid for each act of violation.

3. The violation should be discontinued and dining car work should be returned to the dining car employes.

EMPLOYES' STATEMENT OF FACTS: The subsisting Agreement between the Carrier and the Labor Organization, effective March 16, 1948, covers all chefs, cooks, apprentice cooks, pantrymen, waiters-in-charge, waiter-pillow attendants, waiters assigned as pantrymen, apprentice waiters, and all other waiters working on dining, club, observation, buffet-lounge, reclining-seat, lunch-counter, tavern, snack-or-coffee shoppe, and cafe-parlor cars of the Carrier. Its scope covers the preparation and service of food on the Carrier's trains. For many years and until August 31, 1965, employes working under the Agreement handled the preparation and service of food on the train known as the "National Limited," Trains 31 and 32.

On August 31, 1965, without even any prior discussion with the Labor Organization, the Carrier unilaterally posted Supplements 18 and 19 to the Working Schedule (Employes' Exhibits 1 and 2) which removed dining car employes from the "National Limited" and substituted employes of the Pullman Company not coming under the Agreement. The Pullman employes have worked exclusively in cars wholly owned by the Carrier, and have engaged in the preparation and service of food, including three daily meals.

The effect of the Carrier's action is to displace dining car employes coming under the Agreement, deprive them of work, and replace them on Carrier-owned equipment with employes of a contractor, in clear violation of the Agreement.

leased under contract to the Pullman Company for operation. When this claim originated on the property of this Carrier, the protest from United Transport Service Employes went " * * * to the inauguration of (these) Pullman observation-lounge cars * * * " on the National Limited. In handling this case on the property of this Carrier the United Transport Service Employes Committee was unable to cite this Carrier to any rule appearing in its agreement that would give work of this kind to employes coming under the scope of that particular working agreement.

OPINION OF BOARD: Prior to September 7, 1965, the Claimants were assigned to dining cars on the National Limited between Washington, D. C. and Cincinnati, Ohio. Carrier found that the diners were operating at a substantial loss and they were discontinued.

Following the discontinuation of the diners the National Limited carried Pullman-operated Four Double Bedroom — Buffet-Lounge cars. The employes who handle these particular cars are not covered by the Carrier's working agreement with the United Transport Service Employes. These employes were employed by the Pullman Company and represented by the Brotherhood of Sleeping Car Porters.

The Bedroom-Buffet-Lounge cars were owned by the Carrier and operated by The Pullman Company under a lease agreement.

Members of the Brotherhood of Sleeping Car Porters, employed by The Pullman Company operating this kind of equipment, have performed the work in question on the Baltimore and Ohio and many other railroads.

The Organization relies upon Article 1, the Scope Rule, and Article 2 and 3 of the Agreement. The Scope Rule reads:

> "These rules govern the rates of pay, hours of service and conditions of employment of those employes of the classes listed in Article 2 of this agreement, in the employ of the Dining Car Department of The Baltimore and Ohio Railroad Company, except those classes of employes employed on office or business cars."

Article 2 sets Group Classification and rates of pay. Article 3 sets assignment of Waiters-in-Charge and Kitchen Crews — Personnel of.

Third Division NRAB Award 13658 (Mesigh) involved the same Organization. This Award states in part:

> "The Article is the type of scope rule which is general in terms, only setting forth the titles of positions and does not reserve to the Employes any specific or exclusive duties. When general in terms, the Employes have the burden of proving that such work performed by them accrues by reason of custom and practice on the property and must be exclusively performed by them."

Both the Brotherhood of Sleeping Car Porters and The Pullman Company were served a Third Party notice by the Division to which they responded and intervened by filing submissions. The requirements of the law as mandated by the U. S. Supreme Court in TCE Union vs. Union Pacific RR Co., 385 U. S. 157 have been met.

In Third Division Award 13685, Supra, the same question was involved. Referee Mesigh stated in Award 13685:

> ". . . We further find that the Carrier does have the prerogative to abolish positions and terminate the dining car on Trains 9-10, and that dining and beverage service has been provided on the lounge-car for many years, available to all passengers without restrictions and not performed exclusively by the Delaware and Hudson Dining Car Employes. See prior Division Awards 2325, 9269, 10099 and 11206.
>
> The Scope Rule has not been violated and Petitioner having failed to sustain the burden of proving that the work in the instant dispute was the Claimants' exclusively by past practice and custom, the Claim must be denied."

We find no violation of the Agreement of the UTSE. The work in question rightfully belonged to the Brotherhood of Sleeping Car Porters and was covered by their Agreement with The Pullman Company.

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 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1971.

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