Award No. 19188
Docket No. DC-16429

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 456

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 456 on the property of the Southern Pacific Railroad Company, for and on behalf of Lounge Car Attendants James Boutee, Everett S. Green, Alvines Richards, James D. Green, W. L. Jones, Chauncy Golden, L. C. Thornton, Kermit Wilson, Alvin Scott, Samuel E. Winston, and all others similarly situated, for the difference between what they have and will earn and what they would have earned as regularly assigned Lounge Car Attendants on Trains 51 and 52 since March 3, 1966, account of Carrier assigning the established and historic duties of Lounge Car Attendants to Automatic Car Attendants, in violation of the Agreement between the parties hereto.

EMPLOYES' STATEMENT OF FACTS: In September of 1961, Carrier placed into service certain new equipment designated as Automat Cars. Carrier selected certain employes to man this equipment giving them the job title of Automat Car Attendants. Many of the employes so assigned had worked for the Carrier as news agents but had never worked as dining car employes. The Carrier took the position that these jobs were not covered by the Agreement between the parties and we were not able to secure an Agreement covering these positions until after a class or craft determination and a Mediation Board Election.

From the date Automat Cars were placed into service up to March of 1966, the duties of the attendants assigned thereto were restricted to stocking the vending machines, making change and showing the patrons how to operate the machines. At no time prior to March of 1966 did Automat Attendants prepare or serve either food or beverages. Further, during negotiations on the property, ultimately resulting amending the Agreement to include these employes, Carrier represented that Automatic Attendants would not be required to prepare and serve drinks.

On or about March 3, 1966, the Carrier began requiring that Automat Attendants prepare and serve alcoholic beverages. Under date of March 17, 1966, Employes filed time claims on behalf of lounge car attendants assigned to the Oakland and Los Angeles districts. (Employes' Exhibits "A" and "B.") After initial denials, appeals and conferences, at each level of handling this matter was concluded on the property. (Employes' Exhibits "C", "D", "E", "F", "G", "H", "I", "J" and "K".)

The within claims were denied on the property on the basis that the disputed work of selling and serving alcoholic beverages to passengers on Carrier's trains has never been exclusively reserved to any craft or class of employe by any agreement rule, practice, or other authority.

Petitioner has progressed the within claim in behalf of ten employes, with respect to Trains 51 and 52, and it cannot be disputed that the maximum number of employes required to provide the service on the four named trains in the manner contended for is seven. Additionally, claimant James D. Green's employe relationship with Carrier was terminated October 31, 1963; he has not been employed in Carrier's Dining Car Department since that date and representation cannot be properly claimed by Petitioner. Additionally, at the time the instant claim arose, all of the claimants, except James D. Green, were assigned to the extra board at their respective home terminals and did not hold an assignment to a particular position on a certain pair of trains. Such extra boards are operated on a first-in, first-out basis to fill vacancies in regular assignments and temporary positions. Many of the employes in Carrier's Dining Car Department have acquired seniority in more than one classification and when a vacancy occurs, the employe nearest the first-out position on the extra board, holding seniority in the classification in which the vacancy occurs; is called to fill said vacancy.

Passenger traffic started to increase in the early part of June 1966 and shortly thereafter the five claimants having home terminal at Oakland secured regular assignments as lounge car attendants. Four of the assignments resulted directly from the addition of the lounge cars to Trains 51 and 52. The assignment of the fifth claimant resulted from a lounge car attendant stnior in seniority to claimant's voluntarily exercising his seniority to secure a position of Waiter-in-Charge on a seasonal train operated only during the summer months (SHASTA DAYLIGHT).

As concerns the five claimants having home terminal at Los Angeles, claimant J. D. Green, as previously explained, has not been in Carrier's service since 1963; claimant W. L. Jones voluntarily resigned July 10, 1966, while still assigned to the extra board; claimants J. Boutee and E. S. Green secured regular assignments as lounge car attendants as a result of the lounge cars being added to Trains 98 and 99 the first part of June 1966, and the third such position reqquired to provide this service was bid in by an employe having greater seniority than claimant A. Richards, leaving claimant Richards assigned to the extra board.

(Exhibits not reproduced.)

OPINION OF BOARD: The procedural question raised by Carrier will be dealt with first. Carrier contends that Petitioner did not appeal the denial of the Claim by the Superintendent to the highest officer designated to receive such appeals, i.e., the Assistant Manager of Personnel. Petitioner defends by stating that the handling of the Claim was proper under Rule 26 of the Agreement which specifies the officers with whom such grievances are to be handled. The Rule reads as follows:

> "(a) Any claim for compensation or any grievance, except as provided in Rule 25 relating to hearings, not presented in writing by the employe to the Superintendent, within ninety (90) days from the date of the occurrence, giving rise to the claim of grievance, shall be deemed to have been abandoned.

(b) The decision of the officer who initially rules upon such claim or grievance may, within thirty (30) days from date of the decision, be appealed in writing in turn to the Manager, a copy of such written appeal to be furnished to the officer whose decision is appealed and decision on the appeal shall be rendered within thirty (30) days from date of appeal unless an extension of time is mutually agreed upon. In the event an appeal is not taken within the time limit herein provided, the claim or grievance shall be deemed to have been abandoned.

(c) If further handling is desired, following decision as provided in Section (b) of this rule, the proceedings must be instituted within ninety (90) days from date of such decision; otherwise the case will be considered closed."

Petitioner contends further that Carrier cannot change a Rule without bargaining. The record reveals that the parties in the past have followed, on the property, a two step grievance procedure.

Carrier disagrees, submitting as evidence letters addressed to Petitioner in 1949, 1952 and 1954 wherein it informed Petitioner that the Assistant Manager of Personnel was empowered to handle grievances after the Superintendent. One of the letter dated July 16, 1949 follows:

"Mr. W. G. Kelly is appointed Assistant Manager of Personnel, effective July 16th, and in that capacity is designated as the officer of the company with full authority to handle matters pertaining to the interpretations and application of the agreement of December 1, 1947 between Southern Pacific Company (Pacific Lines) and certain of its employes represented by Dining Car Cooks and Waiters Union—Local 456 and 582 and Bartenders Union — Local 41 of the Hotel and Restaurant Employes and Bartenders International Union. These matters have heretofore been handled by you with Mr. H. A. Butler."

The record reveals that H. A. Butler was then Manager, Dining Car, Hotel, Restaurant, and News Service Department.

Carrier also submitted correspondence from Petitioner showing that in 1950, 1952, 1953, 1957 and 1958 Petitioner appealed the Superintendent's denials to the Assistant Manager of Personnel. For its part Petitioner submitted correspondence dated in 1962 showing that it handled a claim exactly as it did the herein matter. The present claim was filed with the Superintendent in each seniority district where it was denied and then appealed to the Manager, System Dining Car Operations and then to this Board. In our opinion the evidence is in equipoise and we are inclined toward the Petitioner's view. We will not presume to suggest how such time consuming procedural questions can be obviated. But it is clear from the record that Claims are handled different ways at different time and as Petitioner did follow the agreement we shall not dismiss on the procedural basis.

As to the merits. Petitioner contends that beginning March 3, 1966, Carrier contends it was March 15, we do not have to resolve that issue, Carrier assigned Automatic Buffet Car Attendants the duty of serving alcoholic beverages on Trains 51 and 52 and thereby interferred with the agreement rights of Lounge Car Attendants in the Northern Seniority District to exercise their seniority. It is undisputed that Lounge Car Attendants, who are in a different seniority class from Automatic Buffet Car Attendants, serve

alcoholic drinks when a Lounge Car is in the consist. It is also undisputed that since March 1966 when both Lounge Car and Automatic Buffet Cars are in the consist both Lounge Car Attendant and Automatic Buffet Attendants, in their respective cars, serve these libations. The record reveals that on Trains 51 and 52 Automatic Buffet Cars operate year round while Lounge Cars are added to the consist only during the peak seasons of Summer and Christmas.

The record reveals that the Buffet Car Attendants and Helpers came into existence in 1961 and remained unrepresented by any Union until a certification by the National Mediation Board resulted in the class being added as a new seniority class in Petitioner's agreement in September 1963. It is not disputed that from 1961 to March 1966 the Automatic Buffet Attendants were not required to serve alcoholic beverages. Carrier alleges that because of several requests from patrons that service was added.

One of Carrier's several defenses is that the work of serving such drinks was not reserved exclusively to Lounge Car Attendants and it therefore had the right to add the relative minor duty of opening and pouring small bottles of liquor into plastic glasses to the work of Automatic Buffet Attendants when they were contacted by patrons while they stood at their post near the vending machines. Such attendants have other duties as well as serving drinks. Among the duties are to make change for patrons, instruct them in the operation of the coin vending machines, opening soups, casseroles, etc., keeping tables clean and assisting handicapped or elderly people with their trays and other related duties.

As to the question of exclusivity of opening bottles and serving liquor Petitioner submits:

> "It is conceded that this service has not been rendered exclusively by lounge car attendants, as alcoholic beverages have been served by stewards, bartenders, waiters-in-charge, lunch car attendants, etc. It is, however, the position of the Organization that these employes, along with lounge car attendants, have the exclusive right to this work as the past practice and expressed intentions of the Carrier clearly indicate that the parties never contemplated the Automatic attendants would perform this work."

There is a dispute as to whether there was any agreement that Automatic attendants would not perform the work. We do not have to resolve it.

Petitioner relies on its Scope Rule and Award 4490 and others. We find that the Scope Rule is general in nature and that Award 4490 is inapposite. As the Scope Rule is general Petitioner has the burden of showing that the service of such drinks was reserved exclusively for Lounge Car Attendants, who are the Claimants herein. In view of the record herein we find that Petitioner has not carried its burden of proving that serving these drinks was reserved to Claimants. Accordingly, we shall deny the claim. It is unnecessary to cite authorities in support of this principle as they are so numerous.

Having come to this conclusion we find it unnecessary to rule on other contentions raised by the parties.

As there were other labor organizations that might have an interest in these proceedings, these possible intervenors were notified of the dispute and invited to make a submission of this Board. These Organizations declined to do so.

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 12th day of May 1972.

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The majority chose to ignore the best evidence and failed to consider the real issue. The Carrier placed employes not covered by any Agreement on the positions of Buffet Car Attendants and Helpers. Carrier maintained none of the ten classes of employes covered by the Agreement were entitled to this work as food and beverages would not be prepared or served. As a result, Automatic Buffet Attendants and Helpers classes were added as the 11th and 12th classes of employes. The Carrier later assigned the work of preparing beverages to the Automatic Buffet Attendants and Automatic Buffet Attendant Helpers stating in the record, "dispensed in the same manner as on the lounge car * * *." Carrier's own action was the best evidence of the work to be encompassed in the classifications of Automatic Buffet Attendants and Automatic Buffet Attendant Helpers. The issue of maintaining seniority rights and the integrity of the Agreement has not been faced. The majority is in error.

/s/ J. P. Erickson
J. P. Erickson
Labor Member

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