

Award No. 847
Docket No. DC-910

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL OF DINING CAR EMPLOYES

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim for compensation for loss sustained by Jim Mohr as a result of being denied the right to exercise his seniority as Chef Cook as of August 29th, 1935."

JOINT STATEMENT OF FACTS: "The claimant, Jim Mohr, was hired as Second Cook, August 1st, 1935.

"When the first roster for Dining Car Employes was issued and posted immediately following execution of agreement dated July 15th, 1936, Mr. Mohr was shown thereon as promoted to Chef with seniority date of February 12th, 1936.

"The Employes claim that Mr. Mohr made his first trip as Chef on August 29th, 1935, and that he is entitled to seniority as Chef commencing that date."

POSITION OF EMPLOYES: "Jim Mohr applied for work as a Chef Cook on or about July 15th, 1935, and was hired as a second cook August 1st, 1935. He appears on the seniority roster as follows:

Entered Service	—	8/ 1/35
Second Cook	—	8/ 1/35
Chef Cook	—	2/12/36

"Mr. Mohr was moved to the position of Chef Cook August 29th, 1935. After making the trip in this position, the claimant was moved back to second cook because no vacancies were open for Chef Cook that he could fill. During this time, up to about September 13th, he was run as Chef Cook when and wherever needed.

"On or about September 13th a vacancy for Chef Cook occurred. The claimant placed his bid for this vacancy. He was denied the job and another employe, Ernie Yates, was assigned in his stead. Up to this time Mr. Yates had never run as a Chef Cook. Yates appears on the January, 1939 seniority list as follows:

Entered Service	—	3/ 3/19
Second Cook	—	3/ 3/25
Chef Cook	—	1/ 4/36

"In the meantime Jim Mohr was assigned on the American Legion Special and thereafter worked a while as Relief Chef. On or about November, 1935, another vacancy for Chef Cook occurred. Mr. Mohr placed his bid for this job and was denied his rights to the run. This vacancy was assigned to Frank J. Wenglass, a second cook who prior to this time had no experience as Chef Cook. Mr. Wenglass appears on the January, 1939 seniority roster as follows:

Entered Service	—	1/30/27
Second Cook	—	8/ 3/29
Chef Cook	—	1/13/36

Second Cook, whereas the three other Second Cooks referred to above were holding regular assignments as such, and had been for a long time.

"As further proof of the fact that occasional or emergency service did not serve to establish seniority, the Carrier wishes to state that it had been, prior to present agreement, the practice to occasionally use a Chef picked up from the outside for a few days service. Such employes did not accumulate seniority and were not carried on rosters.

"It is the position of the Carrier that the claim of the Employee is without merit, in that it is not supported by schedule rules nor past practice, and should be declined."

OPINION OF BOARD: The claim in this case is for wage loss under certain implied seniority rights which have not as yet been established. In order for the Board to consider such claim it is first necessary that the seniority date contended for be established. The claim in itself does not ask this Board to establish such a date. The claim must therefore be dismissed without prejudice, for lack of proper handling.

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 employee involved in this dispute are respectively carrier and employee 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 claim shall be dismissed without prejudice as indicated in the "Opinion."

AWARD

Claim is dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1939.