Award No. 8709
Docket No. DC-8694

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees Union Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company for and on behalf of George H. Williams, lounge car porter and other employes similarly situated, that he be restored to regular assignment on trains 505-506 and compensated for net monetary loss as of January 12, 1955, being displaced in said assignment on said date by employe junior in seniority to claimant in violation of the current agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant established seniority as lounge car porter as of September 12, 1936. In accordance with scheduled rules, his seniority was established as of the date he was first compensated at the rate established for that classification of work. Prior to January 12, 1955 claimant was regularly assigned as lounge car porter on trains 505-506. Claimant held this assignment for a period of sixteen (16) years having been first assigned to such assignment in 1936.

On or about January 12, 1955 claimant was removed from this regular assignment by Carrier. His assignment on or about that date was changed to relief assignment as lounge car porter on said trains. On or about that date Carrier awarded the regular assignment of lounge car porter, trains 505-506 to J. W. Pritchett, an employe junior in seniority to claimant.

J. W. Pritchett was first assigned and drew compensation in the classification of lounge car porter in 1940. During the sixteen years prior to January 12, 1955 in which claimant held regular assignment as lounge car porter on trains 505-506, J. W. Pritchett was assigned to and held less preferred runs than the assignment on trains 505-506.

POSITION OF EMPLOYES: Rule 9 (c) of the current schedule provides:

> "Seniority will be restricted to each classification of employes covered by this agreement except that employes assigned as waiters-in-charge, barber-porters, club car porters, parlor car porters, lounge car porters or chair car attendants, will retain their seniority in the

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant, a lounge car porter, was first employed by the Carrier in that capacity on September 12, 1936. Another lounge car porter, Pritchett, was displaced from his regular assignment in January, 1955, and he in turn, on February 23, 1955, displaced claimant from his assignment. It is the position of the claimant that Pritchett's seniority standing was junior to his and that his displacement by Pritchett was therefore in violation of the controlling agreement between the Carrier and Organization.

The record establishes that claimant has been a lounge car porter since September 12, 1936, whereas Pritchett, who was employed as a barber porter, beginning October 27, 1924, first drew pay as a lounge car porter in 1940.

It thus appears that while Pritchett went to work for the Carrier almost twelve years before claimant's starting date, the latter had nearly four years greater service in the position in question. We also note that Rule 9 (a) prescribes that seniority starts when pay begins in the employe's classification. Too, it would seem clear from a reading of Rules 1 and 13 that "barber porters" and "lounge car porters" are separate classifications. Nor is there doubt that Rule 9 (c) specifically provides that barber porters and lounge car porters will retain seniority in the group from which promoted but will not be subject to displacement under seniority rules, except by senior employes of the respective group they are in at the time such displacement is attempted. Up to this point in our analysis of the case, there is no question regarding the validity of the claim before us.

It further appears, however, that effective January 1, 1940, the seniority rosters of barber porters, lounge car porters and club car porters were consolidated into one roster of lounge and club car porters. In combining the several lists into a single roster, employes in the classifications affected were assigned new seniority ranks. In that 1940 roster, Pritchett was ranked fifth and claimant twelfth. This 1940 roster provides the basis for subsequent seniority ratings and it may be noted that the 1955 roster ranks Pritchett third and claimant sixth in seniority.

We consider it eminently important that the consolidated roster was not set up unilaterally but was mutually agreed upon by both the Carrier and Organization. The latter was claimant's duly designated appropriate bargaining agent in the matter of seniority as well as other conditions of his employment. He is entitled to all the benefits that the Organization has obtained for him as the result of its negotiation efforts, and is bound by the obligations and commitments that it has contracted with the Carrier.

In addition, he possessed certain rights as an individual to protest the seniority position assigned him in the consolidation. He could have, at a reasonable time, raised the question with his own representatives and prodded them to attempt to obtain the desired changes in the roster. He might, also, have invoked Rule 9 (f) which affords him adequate and reasonable protection, as an individual. That rule requires that the roster be posted and empowers the individual employe to protest the order of seniority agreed upon by his collective bargaining representatives and the Carrier, provided that he makes such protest within thirty days "following time of posting."

Claimant not only did not make protest within the thirty day period prescribed by Rule 9 (f) but, so far as the record shows, did not raise any question regarding the matter at any time during 1940 or indeed until some fifteen years later, when he was displaced, the very act a seniority roster contemplates. He sat supinely by, while the rights and obligations of the Carrier, Organization and employes listed on the roster crystallized.

It does not appear that the roster was not duly posted and we find no justification in the record for claimant's failure to make a reasonably prompt protest. There is no claim that the roster was unfairly manipulated or that claimant was singled out for discriminatory treatment. We are satisfied that the Carrier's use of the roster was in good faith at all times in question and that it had every right to utilize and rely on a roster that had been agreed upon with Organization, particularly in the light of Rule 9 (f) and the fact that over a very substantial period of time, objections had not been filed to it by individual employes.

Under the circumstances of this case, there is no valid basis for claimant's position in either the terms of the Agreement, sound principles of labor-management relations or, for that matter, good conscience. Subparagraphs (a) and (c) of Rule 9 are important to consider, but they cannot alter the result since they are limited by Rule 9 (f) and the entire Agreement, as modified by the mutually agreed upon consolidated seniority rosters. Pritchett's failure to displace claimant prior to February 23, 1955, although the former may have been assigned to less desirable runs, is not sufficient to spell out and constitute a waiver of his seniority standing, either by Pritchett or the Carrier, especially since there is no evidence that such displacement was ever attempted prior to that date. In short, nothing in the record detracts from the conclusion that claimant's time to protest his seniority standing was within a reasonable period subsequent to the posting of the 1940 roster and not fifteen years later.

The claim will be denied.

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 applicable Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.