

Award No. 14228
Docket No. DC-15691

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 385, on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for and on behalf of Second Cook, Charles Thompson, that he be paid the difference between the pay he is earning on his present assignment and what he would have earned as Second Cook, on Trains No. 103-104, account of Carrier awarding the Second Cook's assignment on these trains to a junior employee in violation of Rule 6 of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant entered Carrier's service on September 20, 1944 as fourth cook. On October 20, 1944, Claimant was promoted to third Cook. Claimant on April 1, 1945 was further promoted to the seniority class of Second Cook. Carrier has never rejected a bid for an assignment by Claimant in either of the classification in which he holds seniority until the instant dispute, when on August 6, 1964, Claimant was advised that his "bid for the position of second cook on trains 103-104, a bonus assignment," . . . had "been rejected by the carrier because in (Carrier's) opinion (Claimant) was not qualified to fulfill this very vital and important assignment."

Employees filed time claim on behalf of Claimant in letter dated August 11, 1964 which was declined by Carrier's Superintendent Sleeping and Dining Car Department under date of September 24, 1964. (Employees' Exhibits A and B.) Employees' appealed this decision to Carrier's assistant to Vice President-Personnel under date of September 28, 1964, (Employees' Exhibit C) in which letter Employees requested an appeal hearing pursuant to Rule 8(b) of the Agreement between the parties. Rule 8(b) provides:

"(b) If an appeal is taken, it will be filed with the next higher official within ten (10) days from the date of decision and copy furnished the official whose decision is appealed. The officer appealed to shall render a decision within five (5) days after the date of the appeal hearing." (Emphasis ours.)

When claimant Thompson was employed as a fourth cook or dishwasher in 1944, which was during World War II when experienced help was many times unavailable, he had no previous dining car or cooking experience. Although he was advanced to rank of second cook within six months, because of the demand for help in that classification, and there being no experienced employees available, the service which he has since performed as a second cook has been at best only mediocre and for this reason, as well as claimant Thompson's inability to properly perform his duties as a Third Cook and his advancing age (86 years' old) it was and is the Carrier's judgment that claimant Thompson was not and is not qualified to properly and satisfactorily perform the required duties of the Second Cook (bonus) position in the Main Diner on Trains 103-104, therefore, he was not assigned thereto.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. Ernest Monroe, General Chairman, under date of November 4, 1964.

OPINION OF BOARD: The issue before the Board in this case is whether or not the Carrier improperly failed to award the position of Second Cook on the Trains on the dates in question to Charles Thompson.

Briefly stated it was the Carrier's contention that the non-assignment of Mr. Thompson was proper because he was not qualified; that although Mr. Thompson carried the rating of Second Cook the requirements of the particular trains in question were such that Mr. Thompson could not measure up and that the determination of qualifications was a management prerogative.

The Organization argued first that procedurally the Carrier had failed to render a decision within five days after the date of the appeal hearing as required by Rule 8(b), that the Carrier failed to show that Mr. Thompson was not qualified and that this non-assignment resulted in a violation of Rule 6(e) in that a less senior employee was given the work.

This case was originally brought by the Organization as a violation of Rule 6. No mention initially was made of Rule 8. The Carrier denied the claim and the Organization then requested an appeal under Rule 8(b). This processing raises the question of whether the Carrier failed to meet the requirements of Rule 8(b). We think not. The Carrier consistently treated this case as one of lack of qualifications, not discipline or discharge. In their view this was a decision reserved to management and not reviewable under the agreement.

Initially the Organization claimed only a violation of Rule 6. At no time on the property was there a claim by the Organization that Rule 8(b) had not been adhered to, although it had requested processing in accordance with Rule 8. In view of this the Organization request that the case be disposed of procedurally by finding a failure to follow Rule 8 must be denied because it represents a claim not pressed on the property. It should be understood that we are not ruling that matters of this type are necessarily not discipline. They may very well be of that nature. Rather we are ruling that for the Board to consider a claim it must be presented on the property.

In this case, however, considering the record before us it is our view that the only issue for us to decide is whether or not there was a violation of Rule 6.

The Carrier has based its refusal to assign Mr. Thompson on a claim that determination of qualification is a management right. The cases of this

Board appear to sustain the view that unless the Carrier can be shown to be arbitrary or unreasonable in determining qualifications, the Board will not substitute its judgment. This is particularly true in those cases involving promotion to higher classifications.

However, in the Board's opinion this is not such a case. In the matter before us Mr. Thompson held the rank of Second Cook since 1945, as such he held seniority in that classification. It furthermore appears that he never had been turned down for any Second Cook job he bid upon and which his seniority entitled him.

The Carrier's denial of this assignment is based upon a contention that the service on this train is a luxury item and that Mr. Thompson did not measure up to its requirements. It was, however, closed as a Second Cook's position. The question, therefore, is whether the Carrier may establish different qualifications for assignment within the same job classification. Putting this another way, may the Carrier establish job qualifications which in effect enable a Second Cook to perform certain jobs but which disqualify him for others.

Rule 6(e) would appear to allow this. This clause deals with assignments rather than promotions and it states:

" . . . Employees making application will be assigned in accordance with seniority and qualifications. . . ."

The effect of this clause is to preclude assignment by strict seniority when there is a lack of qualification. In the matter before us the Carrier has presented a documented case as to why it decided Mr. Thompson was not qualified for the particular assignment.

We think it is sufficient to preclude us from reversing that judgment as unreasonable or arbitrary.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.

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