

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

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

STATEMENT OF CLAIM: Request for payment of claim in behalf of Dining Car Steward A. J. Cole for compensation for each date and trip he was denied the right to perform service as a dining car steward on Trains 105-106 between Chicago, Illinois and Portland, Oregon and return, and on Train 5 and 6 between Chicago, Illinois and Minneapolis, Minnesota, and return commencing August 18, 1965 and all subsequent dates.

EMPLOYES' STATEMENT OF FACTS: The Brotherhood of Railroad Trainmen (hereinafter referred to as the Union) has an Agreement with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the Carrier), governing rates of pay and working conditions of Dining Car Stewards in accordance with the Railway Labor Act.

The claimant Dining Car Steward A. J. Cole is employed by the Carrier as a steward, and has a seniority date of June 24, 1960, and has six (6) years of seniority in the capacity of a dining car steward and still holds seniority as such.

The claimant in this case made a request and placed his bid for the assignment as a dining car steward on Trains 105-106, operating between Chicago, Illinois and Portland, Oregon — Trains 5 and 6 operating between Chicago, Illinois to Minneapolis, Minnesota. The claimant Dining Car Steward A. J. Cole was refused the privilege of exercising his seniority to the previously mentioned assignments.

The claimant Dining Car Steward A. J. Cole further discussed his exercise of seniority with the Superintendent of the Dining Car Department, Mr. W. R. Jones.

The Superintendent of the Dining Car Department, Mr. W. R. Jones, in a letter dated September 3, 1965, denied Dining Car Steward A. J. Cole the right to exercise his seniority, stating that he did not have the qualifications for this assignment. The letter of the Dining Car Superintendent is being outlined for your information:

In view of the foregoing I must necessarily advise you that the instant claim is respectfully declined.

In connection with your letter to me under date of November 18, 1965, File: 2386 (192) Seniority Claim Steward A. J. Cole, please be advised that I cannot agree that the instant case is 'identical' to the case covered by Award 13960 nor can said award be properly cited as a precedent in the instant case.

Yours very truly,

/s/ S. W. Amour
Asst. to Vice Pres."

This dispute was subsequently handled in conference with the Carrier in accordance with the contract rules and the Railway Labor Act and was declined by the Carrier and is now before your Board.

CARRIER'S STATEMENT OF FACTS: The claim that has been progressed to your Honorable Board, for reasons that will be fully explained in "Position of Carrier", has not been properly handled by the Organization in accordance with Rule 19, Time Limit on Claims, of the currently effective Schedule Agreement between the parties here in dispute, Section 3 First (i) of the Railway Labor Act and/or Circular No. 1 of the Board; therefore, the claim is barred.

Rule 12 (a) of the currently effective Agreement reads:

"New positions or vacancies known to be of more than thirty (30) days' duration will be promptly bulletined for a period of ten (10) days. Stewards making application will be assigned in accordance with seniority and qualifications and so designated by bulletin. Such positions or vacancies shall be filled temporarily from extra board pending an assignment." (Emphasis ours.)

Under date of September 3, 1965 Superintendent Sleeping and Dining Car Department, W. R. Jones, notified Claimant A. J. Cole that his bid for the position of steward on the dome diner on Trains 105-106 was rejected, as in accordance with the provisions of the aforequoted rule, he did not possess the necessary qualifications for the assignment.

To set the record straight, there is only one assignment in this case, i.e., the position of steward on the dome diner on Trains 105-106. The reference to Trains 5 and 6 is that the occupant of the steward's position on Trains 105-106 relieves the steward on Trains 5-6 for one trip to fulfill his guarantee. However, the trip on Trains 5-6, for reasons that will be fully explained in "Position of Carrier", is not involved in, nor a part of the instant claim.

OPINION OF BOARD: The fundamental facts involved in this dispute are not in issue. Claimant bid for a preferred assignment as steward on the Dome Diner, which operates between Chicago, Illinois and Portland, Oregon. This particular assignment works aboard Trains 105-106 and relieves the steward on Trains 5 and 6. Carrier's Superintendent notified Claimant that his bid for the position was rejected because his prior service as steward did not qualify him for the assignment. A series of claims for specific dates

commencing with September 8, 1965 were filed on behalf of Claimant between October 19, 1965 and February 12, 1967.

On October 27, 1967, an appeal from a continuing claim was filed with Carrier's highest designated officer to receive such appeals, although no initial claim of a similar nature had been filed previously on the property in accordance with Rule 19 of the Agreement. This appeal was considered barred by Carrier and declined on December 17, 1965.

The claim submitted to this Board seeks relief from August 18, 1965 and all subsequent dates for alleged violation of the Agreement. Carrier initially contends that the claim must be dismissed, because it was not handled in the usual manner on the property as required by Section 3, First (i) of the Railway Labor Act.

Although the claim submitted to us is at variance with the series of separate alleged violations filed with the Carrier on the property, the substantive issue is unchanged. Consequently, the variance is not fatal and the merits of the dispute are properly before us. Nevertheless, Rule 19 of the effective Agreement must be considered and applied.

The record reflects that the various claims involved herein arise out of Carrier's rejection of Claimant's bid on September 3, 1965. This Board has frequently held that the essential distinction between a continuing claim and a non-continuing claim is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a particular date. Awards 15928, 14450, 12045, 10532, and others.

Therefore, we find that the Time Limit Rule contained in Article 19 constitutes a bar to all claim dates more than sixty days after the date of the occurrence upon which such claims are based, which is September 3, 1965. Consequently, only those claims which were filed on October 19 and November 1, 1965, were timely presented on the property, and all claims for subsequent dates must be dismissed. Although Carrier failed to specifically deny these particular claims within the specified time required under Rule 19, Petitioner failed to raise this procedural issue on the property.

As to the merits of the dispute, Petitioner avers that Claimant was refused the privilege of exercising his seniority in violation of Rule 12 (a) of the Agreement which provides as follows:

"(a) New positions or vacancies known to be of more than thirty (30) days' duration will be promptly bulletined for a period of ten (10) days. Stewards making application will be assigned in accordance with seniority and qualifications and so designated by bulletin. Such positions or vacancies shall be filled temporarily from extra board pending an assignment." (Emphasis ours.)

Carrier advised Claimant by letter dated September 3, 1965 that his bid was rejected "because in the opinion of the Carrier your services as steward do not qualify you for the assignment." Furthermore, Carrier's notice referred to an earlier conversation with Claimant on the same date concerning the disputed action taken by Carrier.

The thrust of Petitioner's contention is that Carrier was obligated to specify the particular reasons why Claimant was not qualified for this preferred assignment despite his seniority. Numerous awards of this Board have held that when a lack of qualifications of an employee is raised by Carrier, the burden rests upon the Claimant to overcome such determination by substantial probative evidence. Awards 6829, 5417 and 5147. Here, we find no competent evidence to support Petitioner's assertion that Claimant is qualified to perform the duties of this preferred assignment. Award 14228.

Carrier decided that Claimant was not qualified for the position in dispute and so advised Claimant on September 3, 1965. Claimant has failed to offer competent evidence to refute the conclusion reached by the Carrier as to his lack of qualifications. Moreover, there is no evidence that Carrier's action was either punitive or discriminatory. Accordingly, the claim must be denied.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schultzy

Dated at Chicago, Illinois, this 17th day of May 1968.