

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL OF DINING CAR EMPLOYES,
LOCAL NO. 351

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Jim Mohr for seniority as of August 29th, 1935, the date he first was assigned as Chef Cook; and compensation lost as a result of being denied seniority as Chef Cook as of that date."

JOINT STATEMENT OF FACTS: "The claimant, Jim Mohr, was hired as Second Cook, August 1st, 1935. When the first roster for Dining Car Employees was issued and posted immediately following execution of agreement dated July 15, 1936, Mr. Mohr was shown thereon as promoted to Chef, with seniority date of February 12th, 1936. The Employees 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 EMPLOYEES: "Jim Mohr applied for work as Chef Cook on or about July 15th, 1935. He was told that there was no work for Chef or lower positions at that time. Mr. Kelsey, hiring officer at the time he applied, called Mohr on July 31st, 1935, asking him if he wished to make a few trips as Second Cook, in place of Rudy Craig, who was off sick. Mr. Mohr was told at the time that the position as Second Cook would be only open for a few days. Mohr worked those few days and was paid off on August 20th. This employment was given Mohr in the face of an emergency created by Craig being sick. Mohr was employed again as Chef Cook on August 29th, 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 as 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 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

as used in agreement with Dining Car Employees, covers the operation of special cars for a trip, or such other deviations from the regular service maintained which make necessary the drawing upon extra employees or reaching out to pick up and other available help for the particular emergency or special service.

"Because the Employees may again allege verbal protest concerning his seniority made by Mr. Mohr to Mr. Morten, the Carrier is repeating its argument with respect to this feature, used in previous submissions:

"In dealing with the matter of protest made by Mr. Mohr concerning his alleged erroneous seniority date, the Employees refer to Mr. Morten's statement that he did not recall having received the verbal protest claimed registered with him by Mr. Mohr. Mr. Morten denies that any verbal protest was made by Mr. Mohr, such as claimed by him. The Employees cannot offer any proof that such a verbal protest was made to Mr. Morten, and certainly the obligation rests upon any employee protesting his seniority date, to make such protest in writing if he expects to use it as basis for a claim. Even if such protest has been regularly filed in writing it would have been of no avail, because of the facts set forth by the Carrier in the joint submission and in this statement."

"It is the contention of the Carrier that the claim of the Employees is without merit or support under schedule rules and past practice, and should be denied."

OPINION OF BOARD: Jim Mohr was employed as a second cook August 1, 1935, and promoted to chef-cook February 12, 1936. During this interval he worked in emergencies eleven days as a chef-cook. It is claimed Mohr's seniority as a chef-cook should date from August 29, 1935, the date of his first service as such, instead of February 12, 1936, the date of his promotion by the Carrier.

The record indicates that, under the Agreement, effective July 1, 1921, as mutually applied, as well as the succeeding Agreement, effective July 15, 1936, that the use of employees only occasionally for extra or emergency service in a higher class did not serve to establish seniority in that class. Under the facts presented, the action of the Carrier was proper and the claim should 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 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 Mr. Mohr's seniority date of February 12, 1936, as chef-cook is correct and the claim will be denied.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of November, 1939.