

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of C. & N. W. Dining Car Stewards, Chefs and Cooks to have names of J. Smith, E. T. Murray and J. A. Keegler carried on the current seniority roster, based on provisions of Rule 20, Dining Car Stewards, Chefs and Cooks' Agreement."

EMPLOYES' STATEMENT OF FACTS: "James Smith was employed as cook on C. & N. W. Railway January 29, 1914 and was advanced to position of steward December 22, 1916; Edward T. Murray was employed as cook October 15, 1921 and was advanced to steward's position July 15, 1927; and their names were carried on both seniority rosters as follows:

	Chefs' Roster 1939	Stewards' Roster 1939
James Smith	Jan. 29, 1914	Dec. 22, 1916
Edward T. Murray	Oct. 15, 1921	July 15, 1927

"J. A. Keegler was employed as cook March 1, 1931 and was advanced to steward's position August 3, 1935, and was carried on the chef-cooks' rosters from date of his employment as cook.

"Local Chairman protested the dropping of the names of J. Smith and E. T. Murray from the 1940 roster contending these men's names should be continued carried on the chef-cooks' roster as provided for in Rules 20 and 22 of current stewards, chefs and cooks' agreement, which was declined by the carrier."

POSITION OF EMPLOYES: "Rules 20 and 22 of the current stewards, chefs and cooks' agreement, read:

'SENIORITY ROSTERS. 20. Separate seniority roster for stewards and cooks will be posted and revised in January of each year, and will be open to protest for a period of sixty days from date of posting. Errors in the dating of employees whose names appear on roster for the first time, or errors in carrying record forward from previous rosters will be corrected on presentation of proof. Errors not protested within the sixty day period herein specified cannot thereafter be changed.

Seniority roster for cooks will show seniority dating in each class—that is, fourth cooks, third cooks, second cooks, chef-cooks.

A copy of seniority roster, when revised, will be furnished local chairman."

'PROMOTION 22 (a) Promotion will be based on ability, merit, and seniority; ability and merit being sufficient, seniority will prevail, the officer in charge of dining cars to be the judge.

in the lower classes. The provisions of rule 22 in regard to concurrent seniority date in lower classes apply only to the class of cooks, and do not include therein the class of stewards, whose seniority is separate and distinct from that of cooks, and whose names are reported on a separate and distinct seniority roster.

"In connection with application of rule 22, stewards and cooks agreement, the attention of the Board is respectfully referred to its Awards 1029, Docket DC-1057 dated Chicago, Ill., January 26, 1940, wherein question of application of rule 22 of the above referred to agreement was thoroughly analyzed and discussed. The Board denied the claim in Award 1029. However, assuming the employees have a proper claim under provisions of rule 20 in the instant case: Let us analyze the provisions thereof. The rule specifically provides that seniority rosters for cooks will be posted and revised in January of each year, and will be open to protest for a period of sixty days from date of posting, and that errors in the dating of employees whose names appear on roster for the first time or errors in carrying record forward from previous rosters will be corrected upon presentation of proof. As indicated in the statement of facts, the names of James Smith and E. T. Murray were properly eliminated from cooks seniority roster for a number of years prior to May, 1938. In error, in the month of May, 1938 and at the request of the local chairman representing dining car cooks, the names of James Smith and E. T. Murray were placed on the cooks seniority roster with revision of January 1, 1939. When such error was detected their names were eliminated from the roster with its next revision January 1, 1940, since which time neither Smith nor Murray have made any protest account their names being eliminated from the cooks seniority roster, the only protest received being that of the local chairman, who is endeavoring to sustain the position which he took in connection with the case covered by Award 1029.

"It is the position of the railway company that the names of James Smith and E. T. Murray having been placed on cooks seniority roster contrary to provisions of rules applicable to seniority, it was entirely proper that their names be removed from the roster with its revision January 1, 1940, and no protest in respect to the removal of the names of Smith and Murray from the 1940 revision of roster having been made by the employees directly affected by such removal, there is no justification for the claim as presented to this Board.

"In respect to the case of J. A. Keegler: As indicated in the statement of facts, Keegler was assigned to position of steward August 3, 1935, having previously been employed as a cook. With revision of seniority roster, cooks, as of January 1, 1936, Keegler's name was removed therefrom and appeared on roster for stewards. Since January 1, 1936, and covering four revisions of seniority rosters for cooks, Keegler's name has not appeared thereon; neither has Keegler made any protest account his name not appearing on cooks seniority roster. However, after a period in excess of four years the employees are now demanding that under provisions of rule 20, cooks' agreement, Keegler's name must be returned to the cooks seniority roster. The claim of the employees cannot be sustained under rules applicable."

OPINION OF BOARD: The record in this case shows that Claimants Smith, Murray and Keegler were first employed as cooks in dining car service of the C. & N. W. Railway Co. and were subsequently assigned to positions of dining car stewards.

While the records of the parties as to the employment dates and subsequent dates of assignment as dining car stewards are not in agreement, the disposition of this case does not hinge on that question.

In disposing of this dispute, the parties are directed to reconcile the difference in the dates for the purpose of placing this award into effect.

While the parties have referred to Award No. 1029, Docket DC-1057, in connection with this dispute, it will be understood that the award in that case denied the claim advanced that chef-cooks were entitled to promotion to the position of dining car steward under the seniority rules of the agreement.

In disposing of this case, no decision is made as to the seniority rights of stewards to return to or make displacement of chef-cooks as that question is not before the Board. Rule 20 of the current agreement requires that "separate seniority roster" for stewards and cooks be posted and revised in January of each year. The record shows that two of the Claimants, Smith and Murray, were shown on the 1939 roster for chef-cooks; whatever dates were listed for them on the 1939 roster were the result of negotiations between the local chairman and the management. When the 1940 roster appeared, the names of Smith and Murray did not appear thereon, the Carrier contending that their names had been placed on the 1939 roster in error; however, the parties are in agreement that all three Claimants had originally been employed as cooks or chef-cooks and were subsequently assigned to the position of dining car stewards.

The Board is of the opinion that Rule 20 of the current agreement requires that Employees Smith, Murray and Keegler, who worked as cooks or chef-cooks, shall be listed on the cooks' seniority roster with dates that correspond to the time they worked as cooks or chef-cooks.

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 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 Claimants, Smith, Murray and Keegler, shall be shown on the cooks' roster with dates covering the period they worked as cooks.

AWARD

Claim sustained in accordance with the above opinion and finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1940.