

Award No. 6459
Docket No. DC-6796

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY (Lines East)**

STATEMENT OF CLAIM: Claim of Chicago, Milwaukee, St. Paul & Pacific Dining Car Steward D. R. Hockenbury for payment of all time lost when not permitted to work as a Dining Car Steward in accordance with his seniority date, which is April 23, 1947.

EMPLOYEES' STATEMENT OF FACTS: A letter was written to Dining Car Steward D. R. Hockenbury on March 6, 1953, as follows:

**"CHICAGO, MILWAUKEE, ST. PAUL and PACIFIC
RAILROAD COMPANY**

Sleeping and Dining Car Department—2801 W. Grand Ave.
Chicago 12, Illinois

March 6, 1953
File: 233-Hockenbury-DR-A-5

Mr. D. R. Hockenbury,
350 W. Oakdale,
Chicago, Illinois.

"Dear Sir:

"The Carrier has recognized for some time that your speech impediment would be a very serious handicap to you on a train where there was a considerable amount of service. During the time the dining cars were on trains 17 and 18 with the very limited amount of business on that train we felt that we should permit you to continue, however, now that the dining cars have been removed from trains 17 and 18 it becomes necessary that we should notify you that you cannot be considered for regular or extra assignments on the Hiawatha trains.

"Yours truly,

/s/ M. P. Ayars
M. P. Ayars-Superintendent"

capable of satisfactorily meeting the requirements of the service on those high-class trains:

"In addition to the applicable rate indicated above, stewards and assistant stewards, who are regularly assigned to the following trains:

The Olympian-Hiawatha	Nos. 15 and 16
Morning Hiawatha	Nos. 5 and 6
Afternoon Hiawatha	Nos. 101 and 100
Midwest Hiawatha	Nos. 103 and 102

will be paid \$15.00 per month. This additional payment applies only to those stewards and assistant stewards who are regularly assigned to the trains listed above and will be paid to the regularly assigned employe in proportion to his hours of service on the assignment compared with the total hours of the assignment during the month."

The above quoted provision clearly means that the Carrier contracted to make a bonus payment to stewards regularly assigned to the Hiawatha Trains to secure the necessary first-class steward service on those trains and it likewise means the employes contracted to accept that bonus payment on the basis that only fully qualified stewards, capable of meeting the higher standards of the service on the Hiawatha Trains, would be assigned thereto.

We submit that Mr. Hockenbury does not possess qualifications sufficient to properly meet the requirements of the Carrier's service on Hiawatha Trains, proof of which will be found in the record in this case, and as the Carrier has not been unfair, arbitrary nor discriminatory, we respectfully request that its action be not disturbed and that the claim in behalf of Steward Hockenbury be denied.

All data contained herein has been presented to employes.

(Exhibits not reproduced)

OPINION OF BOARD: Because of the discontinuance, on January 24, 1953, of Dining Car Service on Trains 17 and 18, between Chicago, Illinois, and Tacoma, Washington, the Steward assignments in such service were abolished effective that date. The claimant Steward, who had been regularly assigned thereto, made his last trip on January 18, 1953, and thereupon reverted to the extra board, first performing service therefrom on January 20, 1953. His application of March 13, 1953, for assignment to Carrier's higher class Olympian Hiawatha Trains 15 and 16, between Chicago and Tacoma, handling considerably greater dining car business than had been handled on Trains 17 and 18, was declined by Carrier on the basis of lack of qualifications for service on any of the higher class Hiawatha trains. Agreement Rule 11 conditions Carrier's acceptance of applications for assignments on seniority and qualifications. It is patent that the responsibility for determining the qualifications of an employe first lies with the Carrier, and that such determination may be subsequently overthrown upon a showing that it was improper. The investigation record here supports Carrier's determination that claimant lacks the necessary qualifications for Steward assignment on the higher class and heavily traveled trains in dispute because of (1) impediment in speech when under pressure; (2) failure to properly supervise his car and employes assigned to it; and (3) inability to maintain proper records. The Employes have failed in their burden to show claimant possessed the necessary qualifications.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

The Carrier did not violate the Agreement by its action here in dispute.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.