

Award No. 7909
Docket No. DC-7555

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Time claim of Joint Council Dining Car Employees Union, Local 849, on the property of the Chicago, Rock Island and Pacific Railway Company for and on behalf of D. A. Green, chef cook, for the difference between what said claimant D. A. Green was paid as second cook and the rate of chef cook from November 12, 1953 to date because of Carrier's violation of Schedule Rule 9 of current agreement in not according claimant seniority to which he was entitled.

EMPLOYEES' STATEMENT OF FACTS: Schedule Rule 9 of the current agreement provides as follows:

"Seniority. (a) Seniority starts when pay starts in classification covered by this agreement.

"(b) Employees covered by this agreement desiring to be considered for promotion shall file written application and when there is a vacancy or new position which has not been filled by employees holding seniority in such classification, applicants from other groups will be given consideration therefor and the applicant possessing the necessary qualifications and ability will be promoted. Superintendent of Dining and Parlor Cars to be the judge as to qualifications and ability.

"(c) Seniority will be restricted to each classification of employees covered by this agreement except that employees assigned as waiters-in-charge, barber-porters, club car porters, parlor car porters, lounge car porters or chair car attendants will retain their seniority in the group from which promoted, but will not be subject to displacement under seniority rules except by senior employees of these respective groups. Cooks promoted to higher positions in their classification will retain and continue to accumulate seniority in the lower group from which promoted, and date in such lower group will be not later than the date they established seniority in a higher group. Senior employees in service will be given preference in filling vacancies in these positions as per Section (b).

"(d) New positions or vacancies known to be of thirty (30) days' duration will be promptly bulletined for a period of ten (10)

period of claim does not compel the Carrier to pay Claimant Chef's rate for any and all days which he did not perform Chef's services, either through lack of seniority or because of his choice to remain on a Second Cook's job.

For these reasons, this claim has been declined by the Carrier and we respectfully urge your Board to sustain the Carrier's actions.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim concerns the request of one D. A. Green, classified as Chef Cook, for the difference between the rate of Second Cook and that as Chef Cook account of the alleged violation of Rule 9, whereby Claimant Green was denied right to occupy assignment which his seniority entitled him to.

The Organization took the position that Claimant at the time in question had a substantial amount of seniority and ability as a Cook Chef and could not, under prevailing circumstances, be disqualified from holding any assignment of Chef Cook that his seniority entitled him to, within the meaning of Rule 9. It was asserted that Claimant's qualifications had been passed upon and found sufficient, at the time he was promoted to the higher classification of Cook Chef, and that the Carrier's right to disqualify an employee was limited to the time the question of promotion arose, rather than where, as here, an employee had been promoted many years prior to the time the disqualification occurred.

The Respondent took the position that the disqualification of Claimant on the main dining cars of higher class trains 3-4, 7-8, and 10, was proper within the meaning of Rule 9, inasmuch as he (Claimant) had, on two occasions, demonstrated his inability to perform satisfactorily the more stringent requirements of Chef Cook on these runs. It was pointed out that acceptance of Claimant's qualifications to perform the entirely different type of service on trains between Memphis, Tennessee, and Tucumcari, New Mexico, was no guarantee that he was, or would thereafter be, under all circumstances entitled to perform Chef Cook duties on all trains.

The record indicates, and the petitioner does not deny that there is a marked difference in the type of dining car service rendered on runs out of Chicago and those on which Claimant originally qualified as Chef-Cook and on which he rendered service a substantial portion of the time after his promotion to this classification. Claimant here was granted his initial request to fill a bulletined vacancy on the Chicago run. A subsequent bid was likewise honored. Claimant's lack of ability to perform and meet service requirements is not questioned. Likewise he was given the opportunity to secure the needed training while working on a Lower classified position. While so employed he was paid at the Chef-Cook rate.

We therefore conclude that he was given every opportunity to meet the requirements necessary to fill any vacancy that might later exist in the Chef-Cook Classification on dining cars operated out of Chicago. We further conclude that Claimant did not possess the qualifications and ability necessary to fill the position in question, that the Respondent had the right, within the meaning of Rule 9, to judge Claimant's ability and qualification to serve as Chef-Cook, and that the mere fact that Claimant had been promoted to Chef-Cook will not in and of itself substantiate his right to fill all Chef-Cook positions without exception.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1957.