Award No. 8121
Docket No. DC-8588

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company for and on behalf of Herman Bailey and all other employes similarly situated that they be paid established rate for lounge car porter since July 14, 1955 less any amounts paid since said date account Carrier's violation of Schedule Rule 9(b) in promoting junior employe to regular assignment as lounge car porter.

EMPLOYES' STATEMENT OF FACTS: On or about July 14, 1955 Carrier posted assignments to jobs bulletined in Cooks and Waiters Bulletin No. 1140, June 28, 1955 (Employes' Exhibit A attached). It clearly appears from Employes' Exhibit A that claimant is senior to two employes awarded regular assignment as lounge car porters, Trains 509-510. Claimant submitted his bid in writing in due time for position bulletined (Employes' Exhibit B attached).

On or about November 16, 1955 Carrier issued its Bulletin No. 1205 advertising for bids on regular assigned job of lounge car porter, Train 509-510. On November 28, 1955 it posted assignment to that job awarding it to an employe junior to claimant (Employes' Exhibit C attached). Claimant had submitted his bid in writing in response to Bulletin No. 1205. (Employes' Exhibit D attached.)

In June, 1955, second pay period, Carrier assigned claimant to job of lounge car porter Trains 39-40 and he was paid the applicable rate of that position for 44 hours worked as lounge car porter (Employe's Exhibit E attached). In October, 1955, first pay period, Carrier assigned claimant to same assignment and paid him for 40 hours, 20 minutes work in that assignment (Employes' Exhibit F attached).

POSITION OF EMPLOYES: The current agreement on file with this Honorable Board contains Schedule Rule 9(b) which provides:

> "Seniority—(b) Employes 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 employes holding seniority in such classification, applicants from

lished lounge car porter seniority at that time. Under the provisions of Rule 9(b), the Superintendent of Dining Cars determined they were better qualified to handle this type of work, just as he had, on the basis of Bailey's record, decided that Bailey was not qualified for promotion. The General Superintendent, Dining Car's decision not to promote Bailey to the position of Lounge Car Porter was due to the fact that his past service indicated he was not capable of rendering service on a car not directly supervised by another employe. For that reason, other employes were promoted to the position of lounge car porter under the provisions of Rule 9(b).

To sustain the position of the employes in this dispute, would be tantamount to rewriting Rule 9 of the current agreement. The specific authority of the General Superintendent, Dining Cars, to determine the qualification of employes would be abrogated by an affirmative award. The requirement that employes file application for consideration for promotion would be overturned. Likewise, the provisions applying to accumulating seniority while holding temporary, unassigned positions would be completely rewritten. Your Board has pointed out on numerous occasions that your authority under the Railway Labor Act extends only to the interpretation of existing agreements, not to writing or revising agreements.

In the light of the clear and unequivocal language contained in Rule 9 of the applicable agreement, the Carrier respectfully requests that the Board deny this claim.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Joint Council contends that claimant Bailey, by virtue of his seniority was entitled to preference in the awarding of the position in question, and the Carrier's failure to award it to him, was in violation of Rule 9 (c) reading in part as follows: "Senior employes in service will be given preference in filling vacancies in these positions as per section (b)."

Claimant's alleged seniority is based upon his rendition of 44 hours service in June 1955 and 40 ⅓ hours service in October 1955.

Carrier responds to that by saying that the 84 ⅓ hours were emergency service, and relies on Rule 9 (e) which says in part "Employes will not accumulate seniority in the class to which promoted when such promotion is occasioned by emergency or relief trips."

Since the rules also contain a definition of emergency service (Rule 5) and the Carrier relies on that rule, the presumption would be that claimant's service in June and October 1955 did fall within that category in the absence of a showing that it did not, and there is no such showing. Bailey had no seniority based on a regular run.

To the extent that Joint Council believes that the Dining Car Superintendent did not take into consideration claimant's qualifications and relied solely on the qualifications of two other employes as being better qualified it is in error because the record shows that "he had, on the basis of Bailey's record, decided that Bailey was not qualified."

In Award Number 7909 we had before us the same parties and the same rules and an admitted seniority, but still we agreed with the Dining Car Superintendent that the claimant was not qualified. While the record in that case shows claimant's disqualification in greater detail we think the record here indicates sufficient information available to the Dining Car Superintendent so that we cannot say as a matter of law that he acted arbitrarily, capriciously or abused his discretion.

Our conclusion is that the Carrier did not violate the agreement, and the claim therefore must 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 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

That the Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1957.