

Award No. 9341

Docket No. DC-9126

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, 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 & Pacific Railroad Company for and on behalf of Samuel Woodard that he be awarded bulletin position posted under Bulletin No. 1282 dated March 12, 1956 as the senior employe bidding thereon; that he be paid the difference between what he would have earned and what he received as a result of not having been awarded the bulletin position; and that he be permitted to exercise his seniority on bulletin position displacing junior employe awarded position in violation of Rule 9 of the existing agreement.

EMPLOYEES' STATEMENT OF FACTS: On March 12, 1956, Carrier issued its Cooks and Waiters Bulletin No. 1282 bulletining position of one chef, trains 561-562. Bids were received from claimant and 18 other employes. (Employes' Exhibit "A" attached hereto). Claimant was senior employe submitting bid. Of the 19 employes, including claimant who submitted bids, 17 were senior to the employe to whom the assignment was awarded as is made undisputedly clear by Employes' Exhibit "A". On March 26, 1956, position was assigned by Carrier to employe junior to claimant.

Claimant's bid for the subject position was properly received by Carrier in accordance with the provisions of Rule 9. Carrier raised no objection on that ground in the handling of this claim on the property.

On April 10, 1956 Organization filed the instant claim with Carrier's General Superintendent Dining Cars. (Employes' Exhibit "B"). On April 18, 1956, Carrier's General Superintendent Dining Cars, declined the claim. (Employes' Exhibit "C").

On April 19, 1956, Organization appealed the declination of this claim to Carrier's Manager of Personnel, the highest officer designated on the property to hear such appeals. (Employes' Exhibit "D"). Under date of May 1, 1956, Carrier's Manager of Personnel denied the appeal. (Employes' Exhibit "E").

POSITION OF EMPLOYES: The agreement between Carrier and Organization was effective as of November 1, 1938, as revised March 20, 1943 and further revised effective November 15, 1954. The effective agreement is on

The meaning of Rule 9(b) is clear and capable of only one interpretation.

While seniority may be given recognition if the necessary qualifications are present, it is clear that the right of seniority is not established as an absolute right—that faithful discharge of duties, capacity for increased responsibility, and sufficiency of ability are also relevant considerations. Moreover, it is expressly provided that the Company, through the proper official (In this instance, the General Superintendent, Dining Cars) will determine the fitness of employe for promotion. This does not mean, of course, that the Carrier's right to determine questions of fitness may be exercised arbitrarily, to defeat the letter or spirit of the agreement; but neither does it vest in either the complaining organization or your Board the authority to substitute its judgment for that of the Carrier where the rule is applied in good faith.

It is management's prerogative, under the provisions of Article 9(b), to judge fitness and ability. No other rule nullifies or modifies the definite provisions of Rule 9(b). It must, therefore, be obvious that the Carrier did not violate the rights of Claimant Woodard. We, therefore, request your Board to uphold the Carrier's position and deny the claim of the employes.

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

(Exhibits not reproduced)

OPINION OF BOARD: There were nineteen bids received for position of chef which had been duly bulletined. There were no bidders from the chef's seniority roster. The nineteen bidders all were classified as second cooks and held seniority in that classification. The job was awarded to an applicant who had considerably less seniority than the Claimant. The Organization argues that the senior employe should have been awarded the job while the Carrier contends that as judge of the qualifications and ability of the applicants it acted properly by choosing the employe selected who did possess the necessary qualifications. It is our opinion that the Carrier's contention is correct.

A careful reading of Rule 9 (b) discloses that to fill a vacancy or new position, employes holding seniority in that classification will be considered first and if no applicants from the classification to be filled, then applicants from other groups will be considered, and the applicant possessing the necessary qualifications and ability will be promoted. Management is to be the judge of qualifications and ability. A rejected employe may grieve if he believes the Carrier has exercised its judgment in an arbitrary and discriminatory manner. There is no proof offered in this record tending to show that management arbitrarily selected the successful bidder. It is unrefuted that the Carrier's decision was based on first hand personal observations by supervisors who have the responsibility of evaluating employe performance. An analysis of this information revealed that the successful bidder did have the necessary qualifications and ability, while the Claimant did not. The Organization suggests that the Claimant be given a trial period to prove his ability, but this cannot be ordered because the Agreement does not provide for any such arrangement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1960.