

**Award No. 9499**

**Docket No. DC-9200**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Donald F. McMahon, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849**

**CHICAGO, ROCK ISLAND AND PACIFIC  
RAILWAY 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 Fred Lawson that he be paid the difference between what he received as waiter and what he should have been paid as regularly assigned lounge car porter as a result of Carrier's failure to properly promote claimant to lounge car porter position as provided for in existing agreement; and that claimant be granted seniority date as lounge car porter from January 9, 1956.

**STATEMENT OF FACTS:** On December 18, 1955 Carrier issued its Cooks' and Waiters' Bulletin No. 1219. On January 9, 1956 Carrier issued its assignment pursuant to that bulletin. A true and exact copy of the assignment is attached hereto as Employees' Exhibit "A".

The position advertised was one lounge car porter on Trains 509-10. Bids were received from four employees, claimant holding the greatest seniority. No assignment was made as a result of the bulletin and bids received.

Under date of January 18, 1956 Organization's General Chairman filed the instant claim with Carrier's General Superintendent Dining Cars. (Employees' Exhibit "B"). Under date of January 20, 1956 the claim was declined. (Employees' Exhibit "C").

On January 26, 1956 Organization's General Chairman appealed the declination of the claim to Carrier's Manager of Personnel, the highest officer designated on the property to consider such appeals. (Employees' Exhibit "D"). On February 24, 1956 this officer of the Carrier denied the appeal. (Employees' Exhibit "E").

Claimant filed an Official Bid No. 255 for vacancy advertised in Cooks' and Waiters' Bulletin No. 1140 issued June 28, 1955, advertising for bids position of lounge car porter, Trains 509-10. (Employees' Exhibit "F"). Claimant placed this bid July 3, 1955. He was not awarded the position bid for and permitted his bid to stand as formal application for bid pursuant to Cooks' and Waiters' Bulletin No. 1219.

Article 9(b) of the applicable agreement reads:

"(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." (Emphasis ours)

Under the provisions of the above quoted rule, the General Superintendent, Dining Cars, is the judge as to qualifications and ability of employees being considered for promotion. Clarence Hall, who was assigned the position under Bulletin No. 1219, met the qualifications established by the General Superintendent, Dining Cars, whereas other employees seeking promotion, including the claimant, Fred Lawson, had not sufficiently demonstrated that they possessed all the necessary qualifications to be in charge of a lounge car or the ability to provide the standard of service required of a lounge car porter.

The discretionary authority vested in the General Superintendent, Dining Cars, in Rule 9(b), quoted above, is essential for the maintenance of high standards which the traveling public expects on lounge cars. Seniority alone is not a controlling factor in the selection of Lounge Car Porters. Rule 9(b) makes this abundantly clear.

Fred Lawson holds seniority as a waiter. The facts in the case are simply these—that none of the waiters seeking the lounge car porter's position were qualified to fill the lounge car porter's position. There was no discrimination against Claimant Lawson in the instant claim. He, along with other bidders, just was not qualified to act as a lounge car porter. Since none of the employees, including Claimant Lawson, had Lounge Car Porter seniority, the General Superintendent, Dining Cars, was compelled, in order to protect the service, to assign a qualified employee from lesser ranks. He acted in complete good faith, as is evidenced by the fact promotion was granted to Clarence Hall, who is two men senior to Claimant Lawson. (See Carrier's Exhibit "D", seniority roster of Dining Car Waiters, Dated Jan. 1, 1955.)

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 Lawson. We, therefore, request your Board to uphold the Carrier's position and deny the claim of the employees.

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

(Exhibits not reproduced)

**OPINION OF BOARD:** Claim is made on behalf of Fred Lawson, holding a regular assignment as dining car waiter. On December 18, 1955, Carrier issued Bulletin No. 1219, calling for bids for position Lounge Car Porter—Trains 509-510. Claimant with other employees bid in for the position. On January 9, 1956, Carrier, rejected by proper bulletin all bids for such position, and claim is here made that Lawson, being the senior employee was entitled

to the position as advertised, and should have been assigned the position. Further contention is made that the employe should receive compensation from Carrier for the difference in pay in what he received as waiter, and what he should have received as lounge car porter, but was refused such position by Carrier. The Organization relies upon the provisions of Schedule Rule 9 (b) and (c) in support of its allegations.

Carrier argues that the claim of record here was not properly processed to this Division in compliance with the provisions of Rule 11 (g), as to a time limit for filing and processing the claim to the Board. Carrier further denies it has violated the provisions of Rule 9 as alleged in the record.

The Board after reviewing the entire record before us is of the opinion that the allegations made by the Claimant and his Organization are not sufficient to support a sustaining award. There is no evidence here that Carrier or its Superintendent of Dining and Parlor Cars, violated in any way the provisions of Rule 9 as alleged. The bid of Claimant was properly rejected by Carrier, as the rule itself gives the Superintendent the right to judge the qualifications of the employe, as provided by Rule 9(b) and (c). Nor does Rule 9 (c) contain any provision which requires Carrier to provide the employe with a probationary period in which he may qualify for the position involved.

The claim is not meritorious, and should be denied. See Award No. 9341, on this property. Award No. 2534, relied upon by respondent, is not applicable to the facts of record here.

In view of the foregoing as to merits of the claim, we make no findings here as to the position of Carrier in reference to the application of Rule 11 (g).

**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 Employe involved in this dispute are respectively Carrier and Employe 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 as alleged.

#### 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 July, 1960.