

Award No. 9818
Docket No. DC-9344

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Joint Council Dining Car Employees Local 385 on the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for and on behalf of Second Cook C. Williams, that he be paid the difference between all time received by W. A. Farrow as second cook, Trains 101-102 and what claimant actually received, account Farrow being awarded position by bid instead of claimant who is the senior employee; said award of bid to Farrow being in violation of Rule 6 of the effective agreement.

EMPLOYEES' STATEMENT OF FACTS: On January 6, 1956 Carrier issued its Bid No. 50 advertising position of second cook, trains 101-102 (Main Diner). (Employees' Exhibit A). On January 31, 1956 Carrier issued its Award on Bid No. 50 to W. E. Farrow. (Employees' Exhibit B). The award on Bid No. 50 shows that bids were received from claimant and three other employees in addition to the successful bidder.

On January 9, Organization's General Chairman submitted time claim on behalf of claimant on the ground that he was senior qualified employee bidding in response to Bid No. 50. (Employees' Exhibit C). Under date of February 29, 1956 Carrier's Superintendent Sleeping and Dining Car Department impliedly denied claim on the ground that the bid was awarded to the man best qualified. (Employees' Exhibit D).

On March 2, 1956 Organization appealed the decision denying claim to Carrier's Assistant Vice President, the highest officer on the property to consider such appeals. (Employees' Exhibit E.) On March 16, 1956 that official denied the appeal of said claim. (Employees Exhibit F.)

The facts in this time claim are undisputed. Claimant has a seniority date as second cook of June 21, 1948. W. E. Farrow, the employee to whom Bid No. 50 was awarded, has fourth cooks seniority date of January 1, 1956.

EMPLOYEES' POSITION

The current agreement effective September 1, 1949 is on file with this Board and is incorporated herein by reference as though fully set out. Rule 6 of the effective agreement controls the resolution of this claim. It provides as follows:

Trains 101-102, with which we are here concerned, are high class trans-continental trains and one of the principal features of these trains is the superb service in what is known as the main diner which is for the exclusive use of Pullman Car passengers. Dishes served in the main diner on trains 101-102 are not available on any other dining car operated by this Carrier. Therefore, it can readily be seen that the position of Second Cook in the main diner requires an experienced and highly skilled occupant and it is significant to note that due to the superior service required thereon the Second Cook in the main diner on Trains 101-102 is paid a monthly bonus.

Rule 6 (e) of the agreement in effect at that time between the parties here in dispute read as follows:

"(e) New positions or vacancies known to be of more than thirty (30) days' duration, will be promptly bulletined for a period of fifteen (15) days. **Employees making application will be assigned in accordance with seniority and qualifications.** Such positions or vacancies may be filled temporarily pending an assignment. New positions or vacancies or less than thirty (30) days' duration shall be filled, from the extra board, without bulletining."

(Emphasis ours.)

Mr. Williams did not possess the qualifications necessary to meet the high standards and requirements of the Second Cook position in the main diner on trains 101-102 and, in accordance with the provisions of Rule 6 (e), particularly that portion we have underscored, he was not assigned. As has been shown, Mr. Williams had had only limited experience as a Second Cook, same being as an extra employe only and even in that capacity his work was only mediocre. He had never held a regular Second Cook assignment. Certainly it cannot be expected of the Carrier to assign an inexperienced employe such as Mr. Williams to a bonus position in a main diner which excels in extraordinary service and which, therefore, requires the services of a fully qualified, experienced and highly skilled cook. The Carrier's first obligation does, after all, lie in providing its passengers with service that is of the highest quality and in the instant case this could not have been accomplished if Mr. Williams were to have been assigned to the position of Second Cook in the main diner on trains 101-102 because as it has conclusively been shown, he was definitely not qualified for same.

It remains the Carrier's position that this claim is barred for reasons as set forth and the Carrier's defense of its action of not assigning Mr. Williams to the position involved should not be construed as a setting aside or waiving of that position.

We respectfully request that the claim be denied.

All data contained herein has been presented to the employes.

OPINION OF BOARD: Claim here is that Claimant, Second Cook C. Williams was improperly denied position on Trains 101-102 under an alleged violation of Rule 6 of the controlling Agreement. Carrier contends Claimant was not found to be qualified for the position claimed, viz., Second Cook on its train "City of San Francisco". We can find nothing arbitrary or capricious in the Carrier's determination as to Claimant Williams' lack of qualification. Rule 6 (a) specifies "* * * Management to be the judge as to qualifications".

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 there was no violation of 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 8th day of February 1961.