Award No. 10459
Docket No. DC-10224

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes' Union, Local 385, on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for and on behalf of Second Cook A. Height, that he be paid the difference between what he did earn and what he would have earned account of Carrier's refusal to allow Claimant to displace a junior employe on September 5, 1957, in violation of the effective agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant entered Carrier's service on April 21, 1944. Although the established practice of the Carrier is to hire cooks in the lowest classification in that craft, i.e. Fourth Cook, claimant was deemed sufficiently capable of beginning his service with the Carrier as Third Cook rather than Fourth Cook.

Under dates of September 26, 1944, and January 1, 1945, claimant was promoted to Second Cook and Chef respectively. Claimant, however, has never established seniority as such in the latter classification account of not yet completing his probationary period, electing to run on regular assignments as Second Cook instead.

While assigned to trains 15 and 16 as Second Cook, claimant was displaced by a senior employe in accordance with Schedule Rule 6(k). Claimant, in accordance with the same Rule, notified the Carrier of his decision to displace a junior employe on trains 101 and 102 and was instructed to report therefor September 5, 1957. Claimant, however, received a telegram from Carrier dated September 4, 1957, in which he was told not to report (Employes' Exhibit A).

Under date of September 17, 1957, Organization submitted the following time claim:

Mr. M. P. Ayers, Supt.
Dining Car Department
Chicago, Milwaukee, St. Paul & Pacific RR
2801 West Grand Avenue
Chicago, Illinois

A further indication of Claimant Height's lack of qualifications as a cook is the fact that although he has a seniority date of September 26, 1944 as a second cook, he has never qualified for service as a chef, although at least 20 junior second cooks, some employed as recent as 1949, have qualified and are performing service in the higher classification. Ordinarily a second cook, having normal qualifications, would advance to the higher chef classification more or less in accordance with the rank as second cook.

The schedule rules provide that promotion and assignment shall be based on seniority and qualifications. Even if the rules did not so provide, it would nevertheless be the responsibility of the Carrier to see that the various crews were manned with employes having the necessary qualifications to properly meet the requirements of the service.

It is the Carrier's position that Claimant Height did not have the qualifications necessary to properly meet the requirements of the service in connection with the second cook's assignment on the Main Diner on Trains 101 and 102, City of San Francisco, that the Carrier acted fully within its right and responsibility in declining Claimant Height's request and that there occurred no violation of the schedule rules. Furthermore, there occurred no loss to Claimant Height, except that represented by the bonus on the assignment he sought and for which he was not qualified inasmuch as he exercised his seniority to a second cook's assignment on the Coach Diner on Trains 101 and 102.

The claim is without merit and the Carrier respectfully requests a denial award.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned to trains 15 and 16 as second cook and displaced by a senior employe under Rule 6(k) of the contract. Claimant notified the Carrier of his decision to displace a junior employe on trains 101 and 102 and was instructed to report. Claimant received a telegram from the Carrier dated September 4, 1957 in which he was told not to report resulting in this claim.

The Organization points out that a Memorandum of Agreement dated September 29, 1955 in regard to inter-railroad streamlined trains provided in part as follows:

> "3. Assignments of employes covering inter-railroad streamlined trains shall be based on seniority and qualifications, **the management to be the judge as to qualifications.**" (Emphasis ours)

Further that the Organization negotiated a change in that Agreement culminating in a letter of agreement as follows:

> "In line with our discussion today, it is agreed that Item (3) of Memorandum of Agreement entered into September 29, 1955, having to do with inter-railroad streamlined trains, is revised effective February 1, 1956, to read as follows:
>
> 'Assignment of employes to such service on the inter-railroad streamlined trains shall be based on seniority and qualifications.' "

It is the position of the Organization that the removal of the words "the management to be the judge as to qualifications" from the Agreement limits the Carrier's right to independently disqualify an employe without producing any evidence that the employe was disqualified. It maintains that the Carrier in refusing to allow the Claimant to displace in the facts of this case amounted to an arbitrary and capricious act of the Carrier.

While it is true that the Carrier did remove the words quoted above from the Agreement, the Agreement still provides that the assignment of employes on inter-railroad service shall be based on seniority and qualifications.

There are a long line of awards of this Board holding that in absence of an express provision to the contrary the Carrier has a right to decide the qualifications of the employe unless its action is arbitrary and capricious.

From our analysis of the record we do not believe that the Carrier acted in a capricious and arbitrary manner in disqualifying the Claimant in the case.

Therefore, the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 28th day of March 1962.