

Award No. 11077

Docket No. DC-10858

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 848

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 848 on the property of Chicago, Burlington & Quincy Railroad Company for and on behalf of J. G. Jones, that J. G. Jones' name be placed on the seniority roster of 2nd Cooks, showing a seniority date of February 12, 1952, and that a notice be placed on bulletin board next to seniority roster stating that J. G. Jones' name was omitted from current roster through error or misunderstanding, until the next published roster is posted by Carrier.

EMPLOYEES' STATEMENT OF FACTS: On March 8, 1957, Organization advised Carrier's Superintendent Dining Car Department that the omission of claimant's name from 2nd Cooks seniority roster for 1957 had been called to the General Chairman's attention (Employee's Exhibit A).

On March 14, 1957, that official of the Carrier replied to the General Chairman, reciting that claimant was working as a 4th Cook due out on Train 17 on August 11, 1954. He further states that the regular 2nd Cook on this assignment had bid off the run and left a vacancy for a 2nd Cook. Claimant was then called for assignment as 2nd Cook. Carrier's Superintendent then stated that claimant refused the run, saying that he could not handle it. The letter further stated that claimant had at various times worked as a 2nd or 3rd Cook, but just prior to August 11, he had bid in on a 4th Cook run on Trains 17 and 18 on regular assignment. The letter concluded by stating that claimant had voluntarily relinquished or forfeited his seniority 2nd Cook (Employee's Exhibit B).

On March 20, 1957, Organization's General Chairman replied to Carrier's Superintendent Dining Cars and informed him that the facts stated in the letter attached hereto as Employee's Exhibit B were incorrect. The facts reported in the letter of March 20, 1957 were that when claimant reported for duty on Train 17 as regularly assigned 4th Cook, Carrier's Crew Personnel Manager advised him (claimant) that he would have to go out as a 2nd Cook. As claimant did not possess sufficient seniority to work regularly as 2nd Cook, this meant that he would take assignment as an extra board 2nd Cook. The Crew Personnel Manager then told him that if he did not work

Here, the 1955 and 1956 rosters could not create second cook's seniority for claimant, when he had relinquished it in August, 1954.

In conclusion, the Carrier asserts that under the contract between the parties, a dining car employe must protect the work in the various classes where he holds seniority, or forfeit same. When Jones refused to work as second cook on August 11, 1954, it was proper that he relinquish seniority as a second cook. The inadvertent showing of his name on the roster as second cook in 1955 and 1956 did not restore the seniority he lost in 1954.

In view of the above and foregoing, this claim must be denied.

* * * * *

All data herein and herewith submitted have been previously submitted to the employes.

OPINION OF BOARD: The Claim prays that Cook J. C. Jones, Claimant herein, "be restored to the seniority roster as 2nd Cook." As Petitioner states in its brief, "there is here present no claim for money nor is there any claim that Claimant was deprived of a right to exercise this seniority."

The facts are that in 1954, Claimant, who had seniority as a 2nd Cook dating from February 12, 1952, was regularly assigned as 4th Cook on Carrier's Trains Nos. 17 and 18. On August 11, 1954, a vacancy arose for a 2nd Cook on those trains and it was offered to Claimant. He refused. As a result of this refusal Claimant submitted a letter to Carrier resigning his seniority as a 2nd Cook. Petitioner says that Carrier coerced Claimant into taking this action; Carrier says Claimant did it voluntarily. It is beyond the jurisdiction of this Board to resolve this issue since no claim was timely filed under the following Rule of the Agreement:

"Claims and Grievances

"Rule 25. (a) An employe subject to this agreement, who believes he has been unjustly dealt with or that any of the provisions of this agreement have been violated, shall first present the same in writing to the crew supervisor within ten (10) days of the occurrence. If the claim or grievance is not satisfactorily adjusted, the employe or his representative may, following the decision of the crew supervisor, appeal in writing to the Superintendent of the Dining Car Department, providing such appeal is presented within ten (10) days."

By letter dated August 14, 1954, Carrier acknowledged and accepted Claimant's relinquishment of his rights as a 2nd Cook and, *inter alia*, stated that "your name [Claimant's] will be eliminated from the roster of 2nd cooks." Notwithstanding this, Claimant's name was listed in the seniority lists of 2nd Cooks for the years 1955 and 1956. No objection was filed by any party to the Agreement or any beneficiary thereunder as provided for in:

"Seniority

"Rule 15. * * * *

"(c) Seniority lists shall be posted on or about January 1 of each year and they shall be open for correction for a period of thirty (30) days from the date of posting on which an employe's name first appears, and no change will be made thereafter. Protests not made within the time limits herein specified shall not be recognized by either party except in the case of obvious typographical error.

"(d) Copy of seniority roster will be furnished the General Chairman."

On or about January 1, 1957 a seniority list was posted which did not include Claimant's name among the 2nd Cooks; and a copy was mailed to the General Chairman on January 15, 1957. On March 8, 1957, more than "thirty (30) days from the date of posting" the General Chairman called to the attention of Carrier the omission of Claimant's name from the 1957 seniority list. When Carrier refused to insert Claimant's name, Petitioner filed claim.

The obvious purpose of Rule 15 (c) is to provide an agreed upon period during which either party to the Agreement or an aggrieved employe can challenge any listing or omissions in the seniority list. In the absence of any such challenge, within the time prescribed, the seniority list, as posted, becomes binding as to all parties for the balance of the period to the time of the next posting. Inasmuch as neither Petitioner or Claimant sought correction of the 1957 list within a period of thirty (30) days, Petitioner and Claimant are estopped, by operation of the Agreement, from attacking the list as posted. We must, therefore, deny the Claim.

Petitioner argues that seniority is a personal right of each employe which cannot be denied him under any circumstances. We do not agree. Seniority, in its generic sense, is length of service. Inherently, it vest no rights. Seniority rights, if any, are created by the employment agreement. As the parties, by agreement, are free to establish seniority rights, they are equally free, by agreement, to qualify the application and exercise of the rights. The latter was accomplished in Rule 15 (c) of the Agreement here under consideration.

As to whether Petitioner could file or did file a timely claim for inclusion of Claimant's name in seniority lists of 2nd Cooks for years following 1957 is not before us.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.