

Award No. 11666

Docket No. DC-11253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Time claim Joint Council Dining Car Employees Union, Local 351, on the property of Erie Railroad Company, that James Flamer and other employees similarly situated shall be paid the difference between what they were paid in the calendar month of December, 1956, and what he or they would have earned, had he or they been assigned in accordance with their seniority to the vacancies erroneously awarded to Mr. Neal, and that such compensation shall be issued by separate check.

EMPLOYEES' STATEMENT OF FACTS: Under date of January 11, 1957, Organization's General Chairman lodged the instant claim with Carrier's Manager Dining Car Department (Employees' Exhibit A).

On December 13, 1956, Carrier released a bulletin, advertising two chef cooks' positions vacant on Trains 1-2 and 5-6. The bulletin stated: "All applicants must be on chef roster" and that "All bids received up to and including December 16, 1956." As result of this bulletin position was assigned to Employee Neal, despite the fact that Employee's name did not appear on Carrier's chef cook roster for 1956. The record will show that at the time of assignment of the vacancy to Neal, Claimant and other employees had sufficient seniority to bid on and be awarded the jobs bulletined, and that Carrier's awarding of the position to Neal was in violation of the current agreement.

On January 21, 1957, Carrier's Manager Dining Car Department advised Organization's General Chairman that Claimant had never been promoted to chef and verified the fact that Neal does not appear on chef's roster published by Carrier for the year 1956. Furthermore, Carrier's Manager Dining Car Department admitted Claimant's use as chef and that Claimant was hired as a second cook, December 23, 1954, admitting Claimant's seniority, as second cook, over Neal. Claimant entirely ignored the short time on the bid, in

Furthermore, the claim for "other employees similarly situated" is completely without merit. There are no facts concerning "other employees." No claim has been presented by or on behalf of any employee other than Flamer to the effect that chef cook Neal was improperly assigned to the position of chef cook on trains 1, 2, 5 and 6.

The Carrier has established that there has been no violation of the Current Agreement and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier submits that the claim should either be dismissed because of failure to comply with the time limitation of Rule 8 and presenting a stale claim, or denied because it has no merit.

All data herein have been presented to or are known to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is the asserted seniority of Claimant James Flamer over N. Neal as Chef Cook. Also it is contended right of appeal here is barred under Rule 8 (b).

"The right of appeal through the regular channels to the Chief Operating Officer designated is conceded. However, appeals from decisions rendered must be made within thirty (30) days . . ."

That time limitation applies only to appeals handled on the property and does not apply to appeals to this Board. Award No. 10087 by Referee Dugan; Awards Nos. 10133, 10226, 10323 by Referee McDermott.

The seniority rule involved is Rule 4 (a) of the effective Agreement.

"Seniority of employees shall date from date they last entered the service as chefs, cooks or waiters. Employees whose applications for employment are approved and who have performed service for a period of six consecutive months of not less than ten (10) days in each month will establish a seniority date under this rule."

Under that rule Claimant Flamer acquired a seniority date March 16, 1956, Neal as of previous December 22, 1955. Both had sufficient ability and fitness.

Claimant complains that position was bulletined only 3 days instead of 10 days as promised by Rule 3 (a). Since Claimant did bid for the position and there is no evidence of any claim from any other employee, the Claimant was not prejudiced.

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 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 5th day of August 1963.