

Award No. 14690

Docket No. DC-15756

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL OF DINING CAR EMPLOYEES' UNION
(Local 849)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union Local 849 on the property of the Chicago Rock Island and Pacific Railroad Company for and on behalf of James A. Buford, Chef Cook, that he be paid the difference between the rate of pay as second Cook and Chef Cook on Train No. 17 and No. 18 since January 22, 1965, account of Carrier awarding Chef Cook bid on this assignment to one Sherman Williams instead of Claimant in violation of the Agreement between the parties.

EMPLOYEES' STATEMENT OF FACTS: Under date of January 11, 1965, Carrier via Bulletin No. 3208 posted for bid three (3) regular assignments for Chef Cook on its Train No. 17 and No. 18. (Employees' Exhibit A.) This bulletin was posted on the Minneapolis and Chicago Boards from January 11 to January 20, 1965 as per Rule 9 (b) of the Agreement between the parties.

Claimant during the ten (10) day period bidden on the assignment in question. Carrier, however, accepted a bid from one Sherman B. Williams on January 22, 1965 and awarded the assignment Claimant would have received to this employee. This employee was not, at anytime between January 11, 1965 and January 20, 1965 on leave of absence, nor was he absent from service during this period.

Employees filed time claims on behalf of Claimant, further requesting that Claimant be placed on the assignment. (Employees' Exhibit C.) Carrier in letter dated March 15, 1965 denied the Claim (Employees' Exhibit D) Carrier based its denial on rule 18 of the Agreement, hereinafter set-out in full, further asserting that claimant was unable to bid during the time limit because of the nature of his assignment.

Employees appealed this decision to Carrier's Vice-President, Labor Relations, the highest officer on the property designated to consider appeals, who under date of May 19, 1965, also denied the claim. (Employees' Exhibit E and F.)

(Exhibits not reproduced.)

OPINION OF BOARD: In accordance with Rule 9(b) Carrier posted Bulletin No. 3208 on the Minneapolis and Chicago bulletin boards from January 11 to January 20, 1965, advertising three regular assignments for Chef Cook on Trains Nos. 17 and 18.

On behalf of James A. Buford the Brotherhood contends that one of these assignments was improperly awarded to Sherman B. Williams. It maintains that Mr. Buford applied for the position within the ten-day period prescribed by Rule 9(b), but that it was assigned to Mr. Williams who filed his application on January 22, 1965, after the expiration of the ten-day bulletin period.

Carrier argues that it properly assigned the position to Mr. Williams because he was the senior Chef and therefore he was entitled to first choice on any bulletined position. Moreover, it points out that inasmuch as Mr. Williams was away from service at the time the Chef positions were bulletined, he would have had the right under Rule 18 to exercise his seniority and displace Mr. Buford if that employee had been awarded the assignment.

The record reveals that Mr. Williams' bid was made on January 22, 1965, more than ten days after the position was bulletined, and, therefore, it was improper under Rule 9(b). Mr. Buford made his bid within the prescribed time and should have been assigned to the Chef Cook position on January 21, 1965.

The record also indicates that Mr. Williams returned to service on January 26, 1965, after an absence dating from January 12, 1965. Rule 18, "Return to Service," gives Mr. Williams "the right to any run which may have become vacant during his absence in any classification that his seniority entitles him to." Under these circumstances Mr. Williams had the right to the position beginning with January 26, 1965, the date of his return to service.

Since the Agreement was violated, Mr. Buford is allowed compensation equal to the difference between the rate of pay as Second Cook and Chef Cook for the assignments he should have been permitted to hold on Trains Nos. 17 and 18 for the period between January 21 to January 26, 1965.

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 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

AWARD

That the Agreement was violated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.

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