

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
GREAT NORTHERN RAILWAY COMPANY**

DISPUTE.—

"Claim of Mr. H. G. Best for position of Stenographer in Western Traffic Manager's Office effective September 1, 1931, and compensation for monetary loss sustained as a result of being denied position."

FINDINGS TO SUPPORT SUPPLEMENTAL AWARD.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing in the original award made in this cause and also in this second or supplemental hearing which gives rise to this supplemental award.

Said cause having deadlocked, Paul Samuel was called in as Referee to sit with this Division.

On July 15, 1935, this Division adopted the following Award:

"It is, therefore, the award that Mr. Best shall be placed in the position as Stenographer in the Western Traffic Manager's office on September 1, 1935; that he shall be permitted to demonstrate his ability to hold and handle said position; that he shall be called upon to perform the usual and customary duties of that position; that the carrier management, between October 1 and December 31, 1935, shall report to this Division in writing, showing in what respect, if any, Mr. Best does not possess sufficient fitness and ability to handle the position, and shall at the same time furnish Mr. Best with a copy of such report.

"In case of the failure of carrier to make such report before December 31, 1935, the position will then be awarded to Mr. Best permanently.

"This Division shall be the final arbiter as to whether the carrier had exercised good faith in this dispute, as well as to the fitness and ability of Mr. Best to hold the position thus assigned.

"This Division further reserves the right to make such investigation as it sees fit for the purpose of determining the question of fitness and ability of Mr. Best.

"This Division further reserves jurisdiction of this case for the purpose of finally determining Mr. Best's fitness and ability, and also determining whether Mr. Best is entitled to compensation for monetary loss sustained as claimed by him."

Said award having been placed in effect by both parties, it appears that the Carrier placed Mr. Best in service on the position in question on September 3, 1935, the 1st and 2nd being Sunday and a Holiday respectively.

On November 19, 1935, the Carrier reported in writing to this Division showing in what respect, as it claimed, that Mr. Best did not possess sufficient fitness and ability to handle the position which had been conditionally awarded him by this Division on July 15, 1935. It is claimed in Carrier's report (a copy of which was forwarded to Mr. Best) among other things, that during the month of September 1935, that 22.6 percent of his work required correction due to errors of various kinds, including transcription of notes, stenographic errors, apparent omissions, and improper grammatical construction which confused the meanings of communications. The next 30 days, as claimed by Carrier, showed some improvement, but by no means sufficient to justify the retention of Mr. Best in his position. Further, the Carrier claimed that by the previous award it had been unjustly compelled to prepare and train this employe at its own expense for a position which he was not competent to fill. A further report with supporting evidence was made to this Division by the Carrier under date of December 27, 1935, in further substantiation of the November 1935, report. This matter then came on for oral hearing in Chicago on April 21, 1936. Mr. Best appeared in person as did Carrier's representatives and many witnesses, with all members of this Division sitting with Paul Samuel, Referee.

No good purpose would be served in reciting the evidence in detail. Suffice it to say that a substantial amount of Mr. Best's work was presented to this Division for inspection and review. Some of the errors charged to Mr. Best are small and inconsequential, due probably to an old and well-worn typewriter. It does, however, appear to this Division that many errors of a substantial character have occurred in Mr. Best's work. Words were omitted in many instances which changed the meanings of the sentences; in other cases words were used which reflected an entirely different meaning from that which was intended. For instance, a few examples will illustrate the wrong use of words—the word "established" was used in place of "equalized", the word "item" for "tariff", the word "rate" for "weight". In other instances words or groups of words were omitted, which rendered the language transcribed unintelligible and patently senseless. While it is true that such errors may occur in any office, however well regulated, yet there is and should be a reasonable limitation in the number of errors. In this case it appears that such errors were almost daily occurrences, and while it is true that Mr. Best during the trial period might have been under some tension in his anxiety to make good, nevertheless, the errors are so persistent from day to day that it appears to this Division that the Carrier should not be required to permanently assign Mr. Best to this particular position. Originally it was inferred by the Brotherhood that the Carrier was not acting in good faith, and that because he was identified with the Brotherhood's organization that discrimination was being used by the Carrier. In order to satisfy itself this Division by its award made on July 15, 1935, ordered that Mr. Best be placed on probation for a period of approximately four months, and that Mr. Best should be given an opportunity to demonstrate his fitness and ability to handle the position.

This Division is of the opinion and so holds that the Carrier was acting in good faith, and that its charge of incompetency as to the employe is substantially supported by the evidence.

AWARD

Claim denied. By the denial of this claim it is not to be inferred that Mr. Best is precluded from assignment to any position which he is competent to fill and to which his seniority rights may entitle him.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 15th day of September 1936.