

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Robert G. Corwin, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS & STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

DISPUTE.—

"Claim of H. C. Carrasco that he should be permitted displacement on position of Assistant Chief Clerk, Commissary Accounts Bureau, Auditor of Miscellaneous Accounts Office, San Francisco, and that he should be compensated for actual wage loss."

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

The carrier and the employee involved in this dispute are respectively carrier and employee 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. Reference is made to Award No. 322.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Robert G. Corwin was appointed Referee to sit with the Division as a member thereof.

From the 664 pages in this docket, and by consent of the representatives of the parties, this rather simple issue seems to evolve: Did the claimant Carrasco possess sufficient fitness and ability to require the management to allow him to displace a junior as assistant chief clerk in the commissary bureau at San Francisco? He himself had been displaced, and Rules 28 and 41 of the Clerks' Agreement with the carrier protect him in the action he attempted, provided he possessed sufficient capacity to warrant the belief that he might acceptably occupy the position he sought. Rule 36 of the Agreement, which must be considered in connection with the others, seems certainly to assume that an employee should be allowed to bump off a junior even though he might not be immediately as capable, for it offers him the opportunity to qualify himself within a reasonable time and demonstrate his ability.

Reading through the voluminous submission, we cannot find that the duties of the position he requested are very definitely described. He says that in a general way he understood them and felt himself competent to handle them. He had been employed by the company for 25 years in various capacities, promoted from time to time, occupying when displaced the position of assistant chief clerk in the Property Bureau. His representatives contend that the work he asked for was somewhat similar. According to the carrier the job involved a considerable amount of accounting. Carrasco claims that prior to his employment with the company and thereafter in outside avocations he had practiced accounting and that he had constantly studied it. The record convinces the reader that he is a man of more than ordinary education and capability. When denied the displacement, he exercised his rights in the station accounts bureau, at a slightly reduced rate of pay. He fulfilled the duties of that job with unusual distinction. It is said, and we do not believe that the statement is denied, that this place required as much knowledge of accounting as the one he had been refused.

The decision of the management seems to have been based largely upon the judgment of the chief clerk under whom Carrasco had formerly worked. The chief clerk himself was not an accountant, and it does not plainly appear that he made much investigation as to Carrasco's earlier experience. The determination

of the question of fitness and ability must rest largely in the management and, as we have recently held, it should not be disturbed and that of the division substituted for it, if reasonable minds might differ in reaching a conclusion. The motive of the management is a matter which must necessarily be considered. While in this case the latter finally stated that it based its action solely upon the question of the claimant's ability, there was introduced in evidence certain suggestions as to the employee's outside activities, some of which were suspected of being rather radical but none of which were clearly established to his detriment. The mere reference to such considerations always injects a suspicion that they may have played some part in an adjudication of what should have been an impartial investigation of the applicant's merits. When such elements are introduced their only apparent relevance is to justify the carrier's attitude. On the other hand, Carrasco was retained, which would indicate that there was no great antagonism against him personally.

Upon weighing all the evidence, we feel that the management should have given Carrasco a chance to demonstrate his fitness and ability in the position he endeavored to displace. If he had been allowed that opportunity and had failed to qualify under Rule 36, he would have been required to vacate the position and exercise his seniority elsewhere, somewhat as he did on his rejection, and the carrier could have suffered no serious consequences. In that event his damages would have been nominal. It is because we cannot find whether he might have failed that we are uncertain as to whether he is entitled to any loss in wages, and in fairness to the carrier we feel that the question of his ultimate recovery should be deferred until he has demonstrated his fitness and ability to manage the position.

AWARD

Claim sustained to the extent that the displacement sought be permitted, without prejudice to the right to compensation for actual past wages lost after demonstration of fitness and ability.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1936.