

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: "Claim of employes that Carrier violated the provisions and intent of Rules 15, 19, 20, 21 and 22, including interpretation thereof, in filling two positions of Ticket Clerks, August 3rd, 1936, and claim of senior clerical bidders for wage losses resulting from such violations."

EMPLOYES' STATEMENT OF FACTS: "On August 3rd, 1936 two new positions were established in the Ticket Office for which applications were requested.

"Applications for such new positions were duly filed by Mr. Tuttle and Mr. Ruff, who held seniority rights as Clerks on Seniority Group 1-B Clerks—Other Station Operating Unit (See Rule 12).

"The application of these two employes was not given 'systematic consideration' as provided in Rule 15, hereinafter quoted; nor were the said new positions 'preferably filled' by employes from 'other clerical rosters' as provided in Memorandum of Agreement of August 8, 1933, hereinafter quoted.

"One employe from the Baggage and Mail Department, non-clerical roster, was assigned and one employe from the Janitors Department, non-clerical roster was assigned."

The carrier's statement of facts is included in its position.

POSITION OF EMPLOYES: "Rule 19 of our Agreement negotiated August 8, 1933 provides in part:

'All new positions and vacancies shall be promptly bulletined to the roster on which they occur in agreed upon places accessible to all employes affected, for a period of 5 days, bulletin to show location, title, hours of service and rate of pay.'

"Rule 15 of the agreement provides in part:

'If a vacancy or new position is not filled from the roster on which it occurs **systematic consideration** will be given to qualified employes on other rosters.'

"Memorandum of Agreement negotiated simultaneously with the negotiation of our rules agreement provides:

'MEMORANDUM OF AGREEMENT

In order to promote opportunity for advancement or promotion, and at the same time preserve appropriate seniority grouping of employes, the provision in Rule 15 of the schedule reading:

for the positions, and awarding them the positions was not in violation of the rules of the agreement referred to in the claim of the employees' representatives.

"Furthermore, your attention is directed to Paragraph G of the Memorandum of Agreement, which provides that the Chief Operating Officer will upon request of the General Chairman review any case where it is believed an injustice has been done, such review to be final. In accordance with the provisions of this paragraph, this case was reviewed in conference with the General Chairman, and in view of the circumstances it was our opinion that no injustice had been done and that the employees awarded the positions were entitled to them under the provisions of the Memorandum of Agreement on the basis of fitness and ability.

"As the Memorandum of Agreement marked Carrier's Exhibit No. 1 indicates, its whole purpose was to afford an opportunity to employees for advancement to positions to which they held no seniority rights, and also promotion from lower to higher groups. It is not understood that this agreement gives employees any seniority rights other than in the seniority districts or group in which they may be employed, except as they may be promoted under the provisions of the Memorandum of Agreement.

"Under the circumstances it cannot be held that the seniority rights of any of the employees who made application for these positions were violated as contended by the committee, and there is no evidence to indicate that the awarding of these positions was handled in other than a fair and impartial manner.

"We respectfully request that the claim in this case be denied."

OPINION OF THE BOARD: There is involved in a determination of this case only the matter of the proper application of Rule 15 of the agreement between the parties, effective August 1, 1933, and the memorandum of agreement of August 8, 1933, setting forth more particularly the method to be followed in applying rule 15.

The broad purpose of rule 15 and the memorandum of agreement is stated in the preamble of the latter to be to promote opportunity for advancement or promotion and at the same time preserve appropriate seniority grouping of employees. The employees contend that the method followed by the carrier in filling two ticket clerk positions August 3, 1936, was not in accord with the provisions and intent of rule 15. They also cite certain other rules of the agreement which the Board does not find to be pertinent to an adjudication of the dispute.

The two positions in the ticket office were bulletined on July 29, 1936, to employees in the ticket office, which constitutes a seniority district. No applications were received on that bulletin. Whereupon, on August 3, 1936, the positions were bulletined to other clerical groups as well as to employees in seniority groups two and three. Fourteen employees made application for one position, of whom four were in clerical groups outside the ticket office; twelve employees applied for the other position, of whom two were in clerical groups outside the ticket office. Several employees applied for both positions, and they are included in the total number of applicants stated. The positions were awarded to Arthur Gutekuntz, who held seniority as a janitor in group three, and John B. Russell, who held seniority as laborer in group two. These appointments were made after conference between representatives of the management and representatives of the employees, as provided for in Paragraph (f) of the memorandum of agreement. But the representatives of the employees did not agree with the management in the selection made for the position. The employees at the conference urged a selection for the positions from among the following employees: J. E. Tuttle, from a clerical group; Louis Meyer, John McNally, and R. C. Tuchfarber, mail sorter and mail laborers respectively, from group two. Tuttle had bid on only one of the

positions; the other three had bid on both of them. Ruff, one of the claimants, had made application for one of the positions. All of these men except Tuchfarber had seniority antedating the successful applicants.

The carrier advanced, as the reason for the selection of the successful applicants, the fact that they had shown qualifications for the positions and had undertaken to prepare themselves for advancement by spending much of their spare time in the ticket office for two or three years prior to the vacancies.

The dispute seems to have arisen from a feeling on the part of the employees that there was partiality shown in permitting Russell and Gutekuntz to work in the ticket office, learning the duties of ticket clerks' positions. They state that at one time the management had declined to permit employees to work in the ticket office, learning the positions, because ticket office employees were bonded. If this barrier existed, it is apparent that the carrier had removed it long before the positions in question became vacant. Nevertheless, it seems not to have been generally understood among the employees that opportunities to learn the work in the ticket office were open to them, which gave rise to the feeling that partiality had been shown. However, it is not shown that any other employees applied for the opportunity of learning the ticket office work and were refused it during the time that Russell and Gutekuntz were learning.

The intent of rule 15 and the memorandum of agreement relating thereto is to give systematic consideration to and encourage energetic and ambitious employees, affording them opportunities to prepare themselves for advancement or promotion, and they should be invoked only for that purpose and on behalf of such employees. On the other hand, the management should be watchful to afford equal opportunities to all employees to advance themselves by promotion in consonance with the true intent and purpose of the rule and the memorandum of agreement. The language of the rule and of the memorandum is so understandable that a controversy such as this should not arise, if both parties endeavor to carry out the spirit and intent thereof. The attitude of the parties, displayed at the hearing, convinces the Board that the misunderstanding which gave rise to this case is not likely to recur.

In view of the record, the claim including that for compensation should be disallowed:

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 record in this case discloses only that a better administration of the rules might have avoided the misunderstanding which gave rise to this dispute, but it is not such as to justify the Board in sustaining the claim of the employees.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1938.