

Award No. 1009

Docket No. CL-949

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

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

PEORIA AND PEKIN UNION RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment of the Brotherhood of Railway Clerks, Freight Handlers, Express and Station Employees, on the Peoria and Pekin Union Railroad Company.

- 1—That the Carrier violated Clerks Agreement when on September 12, 1938 Ticket Agents position became vacant and same was assigned to C. B. Springer, seniority as of May 10, 1917, in lieu of Mr. Frank Shoff, Cashier, seniority as of July 6, 1905.
- 2—That the Carrier violated Clerks Agreement when on September 30, 1938 position of Chief Clerk Ticket Office Union Station became vacant and was assigned to Geo. J. Rogers, seniority as of September 16, 1918 in lieu of senior applicant Roy M. Donnelly with seniority as of October 23, 1916.

"Claim is for differences in rates of pay which they received and what they would have received had they been properly assigned to these respective positions in accordance with rules and seniority."

EMPLOYEES' STATEMENT OF FACTS: "Regular incumbent of Ticket Agents position, Peoria Union Station retired from service on September 15, 1938. The consist of the force in this department at the time this position became vacant was as follows:

Classification	Rate of Pay	Employee	Assigned Hour	Relief Day
Ticket Agent	\$9.20	J. Dailey	8:00 A.M. to 5:00 P.M.	Wednesday
Chief Clerk	7.05	C. B. Springer	6:30 A.M. to 2:30 P.M.	
Ticket Seller	6.20	G. J. Rogers	1:00 P.M. to 9:00 P.M.	

"All these positions are covered by contract rules agreement and incumbents thereof hold seniority on Roster 3 (a). Under date of September 12, 1938 the following bulletin was posted.

**TICKET AGENT, PEORIA UNION STATION,
6:15 A. M. to 2:15 P. M., 20 Mins. MEAL OPTIONAL.
WEDNESDAY OFF, RATE \$9.20 PER DAY.**

'Applicant must be able to read, file and record passenger tariffs, sell local and interline tickets, handle ticket accounting and records, make remittances, answer correspondence and be capable of supervising the work of Ticket Sellers, and must be qualified to furnish bond.'

City Passenger Office is open only between 8:30 A. M. and 5:30 P. M. daily, closing at 1:00 P. M. Saturdays and all day Sunday. The C. B. & Q. City Passenger Office is open only from 8:00 A. M. to 5:00 P. M. daily, closing at 1:00 P. M. Saturdays and all day Sundays. Thus there is a considerable period of time when there is no one available in Peoria from whom the ticket office employees at Union Station could obtain any detailed information as to routing, tariffs, rates, ticket forms, etc., concerning these two lines. The balance of the railroads involved have no City Passenger Representatives in Peoria. In addition to this the Rock Island Station Passenger Ticket Office is closed at various times during the day and our ticket office employees receive a great many telephone requests for information concerning Rock Island service and Illinois Terminal Railroad service. Ticket office employees at Peoria Union Station Ticket Office must be familiar not only with routes and rates out of Peoria via our using lines, but also through routes, rates, ticket forms, etc. via these and other railroads at Chicago, St. Louis, Indianapolis and many other points throughout the country. They of course make up and sell interline coupon tickets via all railroads and routes throughout the country and in a general way, as expressed by City Passenger Agent Johnson of the C. B. & Q., they are not there merely to sell tickets, but to sell railroad and bus transportation.

"The Carrier reiterates its position that these assignments were made absolutely in conformity with Rule 6 (a) of the Clerks' Schedule and that there was no violation whatever of any rule in the Clerks' Schedule in its action in making these assignments and respectfully requests that the Board so find."

There is in evidence an agreement between the parties bearing effective date of March 17, 1938.

OPINION OF BOARD: The foregoing sets forth the claims, the positions, the facts and the contentions of the parties with reasonable fulness and accuracy.

The Employees claim:

1. That the carrier violated Clerks' Agreement when, on September 15, 1938, on the resignation of Ticket Agent J. W. Dailey, it assigned the vacant place to one C. B. Springer, whose seniority dated from May 10, 1917, rather than to Mr. Frank Shoff, seniority as of July 6, 1905.
2. That carrier violated Clerks' Agreement when, on September 30, 1938, the position of Chief Clerk Ticket Office became vacant and was assigned to George J. Roger, seniority as of September 16, 1918 in lieu of Roy M. Donnelly, with seniority as of October 23, 1916.

Claim is for differences in rates of pay which they received and what they would have received had they been properly assigned to these respective positions in accordance with rules and seniority.

The agreement governing hours of service and working conditions between the brotherhood and the carrier became effective March 17, 1938. Rules of this agreement cited are: one, two, six, seven and nine. The principal dispute is over the interpretation and application of rules six and nine, which are as follows:

RULE 6

PROMOTION BASIS

"(a) Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. The seniority provisions of this rule shall not apply to excepted positions covered by Rule No. 1."

RULE 9

TIME IN WHICH TO QUALIFY

"Employees entitled to bulletined positions will be allowed thirty (30) days in which to qualify in such position, and failing to qualify shall retain all their seniority rights, and may bid on any bulletined positions, but may not displace any regularly assigned employee. Employees will be given co-operation of department heads in their efforts to qualify."

The carrier contended that rule six means that seniority controls promotions only when ability and fitness are sufficient; and that rule nine was not violated because ability and fitness of Springer and Rogers were shown by many years' experience as assistants to the retiring ticket agent in his office; that Shoff and Donnelly, who were employed in the freight office, had had no experience whatever in selling tickets or in the passenger service and, therefore, their seniority did not avail as it would require years to gain the requisite ability and fitness.

The employees contended that even though Shoff and Donnelly were freight office men and had had no experience in the ticket office and selling tickets, they were entitled to positions in the ticket office by reason of their seniority, and it was the duty of the carrier to place them in those positions and allow them thirty days to qualify and to give them cooperation in their attempts to qualify.

This is another case where precedent must control. A number of awards in this Division in similar cases give support to the carrier's interpretation of rule six.

In Award Number 592, rule 5 (a) reads:

"Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions."

"OPINION OF BOARD: This case involves wholly a question of fitness and ability. The junior man awarded the position of crane operator had some experience on the position while the petitioner, who is senior, merely thinks he could operate it if accorded some instructions and practice; quite possibly he could but the carrier is under no obligation to assume this hazard when it has available a known qualified man. It is not a question of relative qualifications; the man awarded shows actual qualifications; the petitioner mere potentiality."

The claim was denied.

In Opinion in Award Number 96, the Board said:

"Under the rules and in the first instance, the carrier has the responsibility of determining the fitness and ability of the employees, and this Division should be reluctant to interfere with the decision so made by the carrier so long as it acts in good faith, is without bias or prejudice and indicates no disposition to purposely or carelessly evade or disrespect the rules as well as the spirit and intention thereof.

"The record in this case discloses that the position of Car Distributor carries with it much responsibility. The position requires training, experience, and judgment. The ordinary Yard Clerk could not under ordinary circumstances take up the work and carry on its multiplied responsible duties. The petitioner is without substantial experience in handling this particular line of work and has been in

no position to study its varied details or become acquainted with the entire territory which this position services although a thorough knowledge of such territory and its requirements as well as peculiarities are quite essential to the successful operation of the work of Car Distributor. The present incumbent has satisfactorily filled the position since April 1926 although he is junior in service to the petitioner, and while it is true that the seniority rule is one of the major elements in the application of the rules between the carrier and the employes, yet seniority cannot be applied in every case and do justice to the successful operation of the Railroad. Seniority cannot be applied irrespective of fitness and ability. The latter elements are of very great importance to the carrier. In this particular case or dispute this Division is of the opinion that the carrier was justified in making the decision that the petitioner did not possess sufficient fitness and ability to perform the duties of the position of Car Distributor."

The claim was denied.

This Division has also denied claims in a number of awards where the rules, alleged to have been violated, were very similar, giving precedence to seniority where ability and fitness were sufficient. In some of them there was a clause "the management being the judge," but in others, there was no such clause.

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 employes involved in this dispute are respectively carrier and employes 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 evidence of record discloses no violation of the agreement or any adequate ground for disturbing the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1939.