

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY

W. R. Kenan, Jr., and S. M. Loftin, Receivers.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that—

"The Carrier violated the provisions of rules of the Clerks' Agreement, hereinafter stipulated, when it failed and refused to assign Clerk B. F. Whaley, to position of Rate Revising Clerk, Jacksonville Bay Street Freight Agency, on his application of June 13, 1938, and after that position was abolished effective July 1, 1938, that the Carrier further violated the provisions of the same rules when it failed and refused to assign Clerk B. F. Whaley to position of Tabulating Machine Operator, at St. Augustine, on his application dated June 23, 1938;

"That B. F. Whaley shall be afforded reasonable advice, instructions and assistance, in the offices where the positions are situated, on current business, over a reasonable period of time, not to exceed thirty days, in his efforts to qualify on these positions, and

"That B. F. Whaley and other employes affected shall be reimbursed for monetary losses suffered as a result of Carrier's violations of agreement rules."

EMPLOYEES' STATEMENT OF FACTS: "On May 28, 1938, Mr. A. H. Reeder, Auditor of Freight Accounts, wrote Clerk B. F. Whaley that position he was occupying would be abolished on June 14, 1938. On June 13, 1938, Clerk Whaley, with seniority date as of September 24, 1935, wrote Mr. Reeder indicating his desire to displace Rate Revising Clerk John Breen, Jacksonville Freight Agency, with seniority date as of November 19, 1936. Mr. Reeder declined Mr. Whaley's request.

"On June 23, 1938, Mr. Whaley made written request on Mr. Reeder to displace Clerk W. W. Stultz, Tabulating Machine Operator, whose seniority dates from January 2, 1936. Mr. Reeder also declined this request.

"The Carrier maintains at Bowden Yard, a Rate Revising Bureau under the supervision of a Head Clerk, who reports direct to the Auditor of Freight Accounts at St. Augustine. Between November, 1936, and July 1, 1938, the personnel of the Bowden Revising Bureau consisted of a Head Clerk, one Rate Revising Clerk assigned at Bowden, and two Rate Revising Clerks assigned to work in the Jacksonville Bay Street Freight Agency, Rate Revising Clerk John Breen having been assigned to service at the latter

bills, involving the use of very simple intrastate rates, without any reference to or connection with interstate rates. When it is considered that the development of a competent rate clerk requires intensive study and practical experience, extending over a period of many years, it does not appear to be necessary to comment that the few hours spent by Mr. Whaley in attending classes of instruction and, later verifying rates on a few intrastate waybills, did not qualify him to be a rate clerk and fill one of the most important positions of rate clerk in the service of the carrier.

"The development of a tabulating machine operator for the purpose of handling what is commonly known as 'machine accounting,' not only requires a period of some four weeks technical schooling in the operation of these accounting machines, but also requires a knowledge of the accounting procedure of the office in which the positions are used, so that the machines can be adapted to that particular purpose. The records of the carrier clearly show that Clerk Whaley had not gained any of this necessary training and experience, notwithstanding which fact he desired to displace an experienced and competent tabulating machine operator in the service of the carrier.

"4. Each of the positions which Clerk Whaley desired to fill had an important and direct bearing upon the revenues and finances of the carrier, and each of them required an incumbent with special training and technical knowledge. Each position carried a substantially higher rate than any of the positions formerly held by Clerk Whaley, which rates were established in recognition of the especial ability required of employes capable of filling such positions. Clerk Whaley was endeavoring to accomplish a promotion for himself, when he was affected by a reduction in force, and promotions are covered by Rule 8, which states that promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. The incumbents of the two positions whom Clerk Whaley desired to displace, had the necessary 'fitness and ability' as evidenced by their occupancy of these positions for a long time prior to Clerk Whaley's desire to displace them, and his entire record of service and experience, which was well known to the Auditor of Freight Accounts, presented no doubt as to his utter lack of 'fitness and ability.' The fact that Clerk Whaley, through his representative, refused to undergo the tests offered by the carrier, solely for the purpose of closing out this dispute, through a duplication of the conditions that existed at the time he desired to make these displacements, simply confirms the belief of the carrier that he was not competent to make these displacements."

There is in evidence an agreement between the parties bearing effective date of January 1, 1938.

OPINION OF BOARD: The rather extensive record before the Board contains much that is irrelevant to the issues involved in this proceeding, and there is considerable conflict of evidence in connection with subsidiary matters which bear more or less upon these issues. Essentially, however, we are called upon to determine, as indicated in the statement of claim, whether the carrier violated the Clerks' Agreement by its failure to assign Clerk Whaley to the position of Rate Revising Clerk on his application of June 13, 1938, and subsequently, to the position of Tabulating Machine Operator on his application of June 23, 1938. For this purpose the record is clear and adequate.

It is conceded by the carrier that in each instance Clerk Whaley sought to displace a junior employe; the carrier based its refusal to make the assignments as requested because of its conviction that Clerk Whaley lacked the necessary fitness and ability to fill these positions. The disposition of the proceeding, then, must depend upon the requirements of the Agreement in this matter and upon the propriety of the carrier's action in light of these requirements.

The applicable rules of the Agreement governing the exercise of seniority embrace fitness and ability, as well as seniority, as a relevant considera-

tion. Only when there is sufficient fitness and ability is it provided that seniority shall prevail. In these circumstances a lack of adequate fitness and ability on the part of the applicant would clearly constitute a valid ground for the carrier's departure from seniority. Even on the assumption that the rule dealing with "time in which to qualify" (which, by its express terms, refers only to "employees entitled to bulletined positions") should be deemed to be applicable to such displacements of junior employees as are here involved, it would be necessary to establish the existence of reasonably sufficient fitness and ability before the obligation would attach to the carrier to afford an opportunity to the applicant to qualify for the positions.

Under these requirements of the Agreement the carrier was under no compulsion to permit the claimant to displace the junior employees; and since the evidence of record does not disclose any abuse of discretion on the part of the carrier in concluding that the claimant did not possess sufficient fitness and ability, there was no violation of the Agreement. The positions involved have been clearly shown to require substantial training and experience of a technical character, and at the time of the claimant's applications his training and experience, in their bearing upon the duties of the positions, were so limited as to afford ample support for, and in the opinion of the Board fully to justify, the judgment of the carrier that the claimant did not possess sufficient fitness and ability for the positions. In these circumstances there was no violation of the Agreement, and no obligation thereafter rested upon the carrier to provide qualifying tests for the claimant. The proposals and counter-proposals for such qualifying tests disclosed of record never matured into agreement of the parties, and hence this aspect of the proceeding provides no ground for altering the conclusion reached on the basis of the rules of the Agreement.

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 evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1940.