

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that R. W. Syler was denied the right to exercise seniority displacing rights over A. J. Dusek on Position No. 60, Tabulating Machine Operator, Division Accounts' Bureau, Galveston General Office, in violation of the rules of the Clerks' Agreement; and

"Claim that Mr. Syler shall now be assigned to Position No. 60 and fully compensated for monetary losses sustained as a result of said violation of rules, retroactive to October 1, 1937."

EMPLOYEES' STATEMENT OF FACTS: "Account reduction in force made effective August 1, 1937, R. W. Syler, with seniority date March 8, 1923, was displaced from Position No. 63, Statement Clerk, Tabulating Machine Bureau, Galveston General Office. He, in turn, declared seniority displacement on Position No. 60 occupied by A. J. Dusek. Mr. Syler's application for Position No. 60 was declined by the Auditor with the statement he was not equal in fitness and ability to the employe he sought to displace.

"In conference with the Auditor, Mr. J. F. Lovely, on February 22-23, 1938, the General Chairman advised that, in his opinion, the fitness and ability of Mr. Syler was equal to that of Mr. Dusek, within the meaning of the rules of the Clerks' Agreement, and further that the rules did not contemplate that the employing officer would be the sole and final judge in disputes involving questions of fitness and ability. Mr. Syler's representative pointed out that the agreement was a binding and enforceable contract between the principals, the Carrier and the Brotherhood, and as such was subject to joint interpretation.

"In an effort to reduce the disputed points to something tangible and factual and take them out of the realm of sheer speculation, the General Chairman proposed that Dusek and Syler be given a competitive examination on all phases of the work assigned to Position No. 60. The purpose of such examination being to demonstrate, in a practical way, that Syler's fitness and ability was equal to that of Dusek as contended by the Brotherhood. Mr. Lovely refused to submit Mr. Dusek to such a test. He stated that the basis for Carrier's refusal to assign Mr. Syler to the position of his choice was that such assignment would unduly impair the service and create an uneconomical operating condition.

"Six months later, on April 6, 1938, a Mr. R. C. Reed, who had no previous experience on calculating machines or timekeeping work of the type performed on Position No. 60, was transferred from the Division Superin-

"Award 1208: The principles as laid down in the above quoted portion of Award 1147 by Referee Sharfman are reiterated and reaffirmed by Referee Danner.

"On the basis of this opinion and those of the other awards cited, it is the Carrier's position that on the basis of precedent a denial of the claim is unquestionably in order.

"If the Board sees fit to sustain this claim, there is one further point to be considered, and that goes to the question of retroactive compensation to be awarded. Due to the nature of the claim, there is a continuously increasing amount of possible back pay piling up; and the total amount is dependent upon how long it takes for decision to be made on the claim. It is to be expected that there will be some necessary delay in the appeal of any grievance up through the various officers of appeal, but there is a limit beyond which the Carrier can not justly be held responsible in back pay claims. In this case the Organization delayed one year and eighteen days, or from May 6, 1938 to May 24, 1939, to appeal this claim from the General Auditor to Assistant to Vice President Gregg, and the Carrier requests that this fact be given consideration in any decision which may be made.

"In conclusion, the Carrier bases its request for a denial of this claim upon the following considerations:

"(1) Mr. Dusek did have seniority in the Division Accounting Department on October 1, 1937, when Mr. Syler declared displacement on the position of tabulating machine operator.

"(2) Mr. Syler's fitness and ability must be measured against Mr. Dusek's to determine under Sections 3 and 21 of Article III whether there is an equality of fitness and ability .

"(3) There is nothing in the schedule requiring tests to be given employees seeking displacement; to the contrary, there is a recent decision of this Board which concludes that they are not required.

"(4) There was no prejudice or bias present in this case, and the decision made was based solely on the pertinent facts.

"(5) The fact that Mr. Reed was placed on the position on July 1, 1938 under entirely different circumstances can have no bearing whatsoever on the present controversy.

"(6) It has been shown conclusively that Mr. Syler's fitness and ability were not equal to Mr. Dusek's, as is required by Sections 3 and 21 of Article III.

"(7) Well-reasoned and numerous precedents, without exception, support Carrier's position."

OPINION OF BOARD: Under the rule in effect on this property the Board is of the opinion the record establishes that the qualifications of Mr. Syler were not equal to those of Mr. Dusek for the position in question, and the claim must therefore be denied.

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 employe involved in this dispute are respectively carrier and employe 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 claim is not supported by the agreement.

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 June, 1941.