

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) The carrier violated the Clerks' Agreement by refusing to assign Mrs. F. C. Miller, the senior bidder, to the position of Refrigeration Clerk in the Car Service Department at Houston, covered by Bulletin Number 10 of December 19, 1940. Also

(b) Claim that Mrs. Miller now be placed on the position and reimbursed for all losses sustained. Also

(c) Claim that all other employees involved in or affected by the carrier's action be reimbursed for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: On December 19, 1940, bulletin was issued advertising the position of Refrigeration Clerk.

Mrs. Miller, who has been employed in the Car Service Department since October 15, 1926 was the senior bidder.

The carrier refused to assign Mrs. Miller, and assigned Robert Truett, an employee who entered service on January 3, 1938.

On January 10, 1941, the Division Chairman wrote the General Manager requesting a formal investigation to develop the facts in connection with the carrier's refusal to assign Mrs. Miller to the position. On January 21, 1941 the Division Chairman traced the General Manager for a reply.

On January 24, 1941, the General Manager wrote the Division Chairman that "I will discuss this case with Mr. Dyer."

On February 7, 1941 General Chairman Dyer wrote the General Manager that the investigation requested by the Division Chairman should be held.

On February 10, 1941 the Assistant General Manager conferred with the Division Chairman and stated he had been requested to handle the matter by the General Manager, however the carrier continued to refuse the request for an investigation.

On February 10, 1941, the Assistant General Manager advised the Division Chairman that he did not consider an investigation was in order. The records indicated that Mrs. Miller had stated in the presence of the Local Chairman that she did not know anything about the duties of the position and that her own experience had been that of a record clerk and, therefore, an investigation to develop her qualifications after she had admitted that she did not know anything about the duties of the position, could only result in a reaffirmation of that statement. The records further indicate that Mrs. Miller knew for at least three weeks prior to the time that the position was bulletined that there would be a vacancy and did not make any effort to learn the duties or qualify for the position.

The employe assigned to the position at the time the assignment was made had been performing the duties of the position for some three weeks prior to the time that the assignment was made and had become familiar with the duties of the position and was considered, from the standpoint of fitness and ability, as the best qualified employe, of those bidding, to fill the position and the assignment was therefore made as provided for in Rule 7 (a) of the current Agreement with the Clerks' Organization.

It is the contention of the Carrier that there was no violation of the Clerks' Agreement in the assignment of Mr. Truett to the position and that Mrs. Miller should not now be placed on the position and reimbursed for all losses sustained, and that the claim of the employes under Paragraphs (a), (b) and (c) as submitted to your Honorable Board, should be denied.

OPINION OF BOARD: This claim presents a charge of violation of Rules 7 and 34 of the Clerks' Agreement.

It is claimed that Rule 7 was violated by a refusal on the part of the Carrier to assign to Mrs. F. C. Miller, senior bidder for the position of Refrigeration Clerk in the Car Service Department at Houston, Texas, which position was covered by Bulletin No. 10 of December 19, 1940. The portion of the rule necessary to be considered here is as follows:

"(a) Employes covered by these rules shall be in line for promotion. Promotions, assignments, and displacements under these rules shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail, except however, that seniority shall not apply in filling the positions named in Paragraph (c) of this rule * * *."

"(b) The word 'sufficient' is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy where two (2) or more employes have adequate fitness and ability."

That the position here is governed by the quoted portion of the rule is beyond question and the fact is not questioned.

A vacancy occurred in the position of Refrigeration Clerk on November 25, 1940. No step was taken to fill it under the terms of the Clerks' Agreement until it was advertised by bulletin for bids on December 19, 1940.

There were four bidders, among whom were Mrs. F. C. Miller with a seniority date of October 15, 1926, and R. C. Truett, with a seniority date of January 3, 1938. Thus it appears that Mrs. Miller had a seniority over Truett in excess of eleven years.

At the time the vacancy occurred, from the record, there being an absence of information to the contrary, we must assume that the two had substantially an equal lack of familiarity with the requirements of the position.

At the time the position was assigned pursuant to bulletin, on the record, there can be no doubt that Truett had acquired some measure of fitness whereas Mrs. Miller had acquired none. Truett, for a portion of the interim

between the occurrence of the vacancy in the position and the time it was regularly assigned, performed all or a part of the duties of the position and of course became familiar with its requirements. Mrs. Miller, if she had any, availed herself of no opportunity to acquaint herself with the duties of the position. She contends that she had none. On the other hand she claims that Truett was given an opportunity to acquire fitness which opportunity was not likewise extended to her. This last is true.

On the basis of these facts we are required to hold that Rule 7 was not violated by the Carrier. It assigned to the position the junior of two bidders who had fitness and rejected the bid of the senior whose fitness was not adequate.

Did the Carrier then violate Rule 34?

Rule 34 is the following:

"Employees who consider themselves unjustly treated, otherwise than covered by these rules, shall have the right of investigation, hearing and appeal in accordance with these rules, provided written request is made to the immediate supervising officer within thirty (30) days of the cause of complaint."

It will be noted that the investigation contemplated by this rule refers to claimed unjust treatment with regard to matters **not covered by the rules**. As we examine the respective showings we find that the claim is that Mrs. Miller was not given an investigation as to her fitness, which is a subject **covered by the rules**. (Rule 7.) She was not entitled to an investigation, on the theory contained in the Employees' presentation, with regard to any matter **not covered by the rules**.

However, brushing aside technicalities and specific statements in the claim and the showings of the parties, in practical effect Mrs. Miller's contention resolves itself into this: She was not afforded equal opportunity following vacancy in the position of Refrigeration Clerk to become fitted to fill the position when it became subject to assignment pursuant to bulletin.

On this proposition she was not given an investigation. It is clear that in this regard she was not given an equal opportunity with Truett. It is also true that she sought no opportunity and made no independent effort to acquaint herself with the duties and responsibilities of the position. Nothing appears which would indicate that the Carrier activated itself in any manner to prevent Mrs. Miller from becoming acquainted with and acquiring fitness for the position. Whether the opportunity afforded Truett was at his instance or at the instance of the assigning authority is not made clear. We do not consider it of great importance.

We observe nothing in this to indicate that Mrs. Miller was unjustly treated in any matter not covered by the rules. In fine the record shows that, by greater industry and initiative, Truett acquired fitness for the position before it was open for assignment, whereas Mrs. Miller did not.

Since this specification of the claim deals with a matter not within the rules and must be determined in the light of reason and simple justice we think it not out of place to say that on sound principle in the efficient operation of railroads, as well as in other industry, the rewards of advancement should go to those who, by attention, effort and ambition, have earned them.

The claim should 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 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;

That the carrier has not violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1942.