

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE VIRGINIAN RAILWAY COMPANY

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

1. That the Carrier violated the Clerks' Agreement when on February 3, 1943, it assigned Mr. W. R. Stephenson to vacancy covered by Bulletin No. 75 dated January 9, 1943, effective January 15, 1943, in the Superintendent's Office at Victoria, Virginia, and declined and refused to consider the application made by E. L. Nelson, the senior employe, and

2. That E. L. Nelson be assigned to the position described in Bulletin No. 75 and be compensated for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: On January 9, 1943, the position of Assistant Timekeeper in the Transportation Department at the Superintendent's Office at Victoria, Virginia, was bulletined as vacancy effective January 15, 1943, on Vacancy Bulletin No. 75, copy of which is shown as Employees' Exhibit No. 1.

On February 3, 1943, Mr. R. W. Stephenson who held no rights in the Transportation Department but did hold rights in the Mechanical Department dating from July 30, 1942, was assigned as the successful applicant to the position designated in Bulletin No. 75. The application made by E. L. Nelson whose seniority in the Transportation Department, the district where the vacancy occurred, dates from October 14, 1941, being ignored and his rights to the position since denied.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties bearing effective date of August 1, 1942, from which the following rules are quoted:

"Rule 3. (a) Except when filling a temporary position or vacancy, seniority will date from the time the employe's pay starts on the respective seniority district."

"(j) A Seniority Roster of all employes in each seniority district will be issued in January of each year showing the name and date of last entry of the employe into the service of the Railroad. It will be posted in agreed upon places accessible to all employes affected and copy will be presented upon request to duly accredited representatives of employes affected. Seniority Rosters will be open for inspection and correction for a period of sixty (60) days from date of issue. Upon presentation of proof of error, such error will be corrected. After

clerical position at Suffolk to which he was assigned being of a different class of work, his training naturally had been of a different character. Therefore, not possessing sufficient fitness and ability to handle the duties of the position on the date the bulletin expired, he was not awarded it.

The carrier would have voiced no objection to assigning Mr. Nelson to the position had it felt he was qualified to handle it. On the other hand, if he had been assigned without regard to fitness and ability, it would have resulted in serious delays in getting the payrolls to the Accounting Department as it is all three (3) experienced clerks can accomplish, and it would have had extremely detrimental effects.

II. Copy of Article 2, Rule 2 (a), Article 3, Rule 3 (a) and (b), Article 5, Rule 5, (a), (d) and (j) of Clerks' Agreement effective August 1, 1942, involved in this dispute is shown as Exhibit "B."

In considering the instant case, the carrier directs the Division's attention to its Awards 96, 98, 110, 275, 396, 592, 632, 1009, 1147, 1441, 1558, 1889 and 2031, involving analogous disputes.

WHEREFORE, in view of the abundance of evidence which supports the carrier's position in this case, your Honorable Board is respectfully requested to deny the claim of the employee.

OPINION OF BOARD: January 9, 1943, the carrier bulletined a vacancy in position of Assistant Timekeeper in the Superintendent's office at Victoria. Claimant bid for the position. He was the only bidder who had seniority rights in the Seniority District in which the position was located. The carrier rejected his bid and appointed Stephenson who held no seniority rights in the district. As justifying its action the carrier, in a letter to the General Chairman of the organization, said:

"In filling this position, we were guided entirely by Rule 5, Paragraph (a). Mr. Stephenson is an experienced payroll clerk, and in addition to that, he has spent many years on this Division, coming in daily contact with time tickets, different classes of engines, cars, etc., all of which is very necessary to successfully perform the duties of Assistant Timekeeper. On the other hand, Mr. Nelson has had no railroad payroll experience whatever, the position that he is holding being in a different department, his training naturally has been of a different order; therefore, all things being equal, Mr. Stephenson was assigned to the position as per the rule and paragraph just quoted.

"In making this decision, we want to be understood that we do not depreciate Mr. Nelson's ability; however, you will, I am sure, agree with me that in filling an important position consideration should be given to the person best qualified, which has always been the custom and is substantiated by the agreement and is in no wise a reflection on the ability of the unsuccessful applicant." (Emphasis added.)

And, again, in another letter:

"This will confirm our statement that Mr. Nelson was not equally qualified with Mr. Stephenson, and for that reason was not assigned to the position. Therefore, your request that he be assigned was denied." (Emphasis added.)

Rule 5 (a) provides:

"In filling vacancies or new positions, fitness and ability being sufficient, seniority shall govern, the appointing officer to be the judge, subject to appeal. (Note—The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.)" (Emphasis added.)

In its action in rejecting claimant and appointing Stephenson to the position the carrier disregarded the letter and spirit of this rule—particularly in the light of the following provision of Rule 3 (b): "Employees awarded bulletined positions will be allowed thirty (30) days in which to qualify. . . ." It is plain from the carrier's own statements that claimant was not denied the position because of lack of ability or unfitness. It appointed Stephenson simply because it considered him, by reason of his past experience, **better qualified** for the position than claimant.

If the carrier can do what it has done in this instance rights to promotion, under the agreement, would be nullified and the bulletining of positions would be a farce. See United States Railroad Labor Board Decision No. 2639 and Award No. 2427 of this Division. Upon the facts of record the carrier acted arbitrarily and capriciously in denying claimant an opportunity to demonstrate his "competency and capacity for increased responsibility." See Award 108.

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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.