

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

ATLANTA JOINT TERMINALS

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

(a) The management of the Atlanta Joint Terminals violated the Clerks' Agreement when on April 23, 1943, it assigned Mr. J. H. Stone, effective April 24, 1943, to position of Assistant Dispatcher and Chief Clerk, third trick, covered by yard advertisement bulletin No. 60 dated April 17, 1943, and declined to consider the application of Mr. M. D. Ramsey the senior qualified applicant, and

(b) That M. D. Ramsey be assigned to position covered by advertisement bulletin No. 60 and that Ramsey and all other employees affected by this violation be compensated for wage loss suffered retroactive to April 23, 1943.

EMPLOYEES' STATEMENT OF FACTS: M. D. Ramsey entered the service of the Atlanta Joint Terminals as Clerk in the Yard Office Department January 5, 1906 and has been continuously employed since that time. Prior to April 1, 1943 the lead, or supervisory clerk, on each shift at the Atlanta Yard Office was classified as Assistant Chief Clerk, and from June 1933 until November 1935 Mr. Ramsey occupied the position of Assistant Chief Clerk, third trick, hours 11:00 P. M. to 7:00 A. M. daily, rate \$6.85 per day (November 1935) and during his occupancy of the position in addition to his own duties supervised six other employees, no fault being found with his work during that time.

In November 1935 to obtain a day position Clerk Ramsey bid off of the Assistant Chief Clerk position to a position described as Chief Tagger paying 25¢ per day less than he had received as Assistant Chief Clerk, third trick, and he has since been so employed except for several intervals when he worked the Assistant Chief Clerk's position, first trick, during the absence of the regular incumbent, these intervals being as follows: January 8, to March 1, 1936, March 20, 21 and 22, 1936, October 9, 14 and 15, 1942, and November 7 and 8, 1942. Effective April 1, 1943 the three positions formerly classified as Assistant Chief Clerk were classified as Assistant Dispatcher and Chief Clerk, the rate of the third trick position being increased from \$7.25 to \$9.05 per day, and the position was bulletined as a new position April 17, 1943 as follows . . .

"Atlanta, Ga., April 17, 1943
File 1801

YARD ADVERTISEMENT NO. 60

Bids will be received until 9:00 A. M., April 22, 1943, on the following positions:

Carrier submits that said Ramsey had already had opportunity to qualify, not once, but on many occasions, but that he had failed to so qualify, and had admitted inability to qualify on positions carrying similar but lesser responsibility on at least two occasions, the last such occasion being on March 20, 1943, or only approximately thirty (30) days prior to his undertaking to place himself on April 23, 1943. Carrier contends that Ramsey had been given every opportunity, under this Rule to qualify and had admittedly failed, and that, therefore, this Rule was not violated by the Carrier when, in meeting its responsibility of determining the fitness and ability of employees, it did not assign Ramsey.

The Carrier reiterates its position that the assignment of Assistant Dispatcher and Chief Clerk was made in full conformity with all of the Rules of the Clerks' Agreement, and that there was no violation of any of the Rules of the Agreement in Carrier's action in assigning Clerk Stone as it did, and referring the Board to its many decisions in similar cases, including Board's Awards Numbers 96, 592, 614, 632, 1009, and many other similar awards, Carrier respectfully requests that the Board deny this claim.

OPINION OF BOARD: On April 17, 1943, the management of the Atlanta Joint Terminals posted yard advertisement No. 60 covering the following position:

"Assistant Dispatcher (and Chief Clerk on 3rd trick), hours 11:00 P. M. to 7:00 A. M. and assignment seven days per week, rate \$9.05 a day."

The bulletin further stated that the above position and a similar one involving the second trick "are practically the same as heretofore known as Assistant Chief Yard Clerks. They are advertised account of change in rate and increased responsibility."

Two applicants bid for the above described position, namely the claimant, M. D. Ramsey, with seniority dating from January 5, 1906, and J. H. Stone, the incumbent Assistant Chief Yard Clerk, whose seniority was junior to Mr. Ramsey's. The carrier assigned the position to Mr. Stone, whereupon the claimant protested and demanded that he be advised as to the reason for his non-assignment, as required by Rule 13 of the effective Agreement of March 1, 1941. In response, the carrier stated to Mr. Ramsey that while he was a capable clerk and had formerly occupied the position of Assistant Chief Clerk, at a time when business was light and the force limited, it considered that he did not possess sufficient fitness and ability to meet the requirements of the position, particularly in respect to supervising the department of subordinate employees.

Rule 5 of the Agreement provides that "fitness and ability being sufficient, seniority shall prevail," the word "sufficient" being "intended to more clearly establish the rights of the senior employees to bid in a new position or vacancy where two or more employees have adequate fitness and ability." Rule 12 is as follows:

"(a) Employees entitled to bulletined positions will be allowed thirty (30) working days in which to qualify, and failing, shall retain all their seniority rights, and may bid on any bulletined position, but may not displace any regularly assigned employee.

"(b) When it is definitely determined, through hearing if desired, that the employee cannot qualify, he may be removed before expiration of thirty (30) working days.

"(c) An employee who fails to qualify on a temporary vacancy may immediately return to his former position.

"(d) Employees will be given full co-operation of department heads and others in their efforts to qualify."

The carrier has the undoubted right to determine, in the first instance, the sufficiency of the qualifications of applicants, under a situation like the one here presented. Award 2427. Rules governing seniority and those providing that employes entitled to bulletined positions shall be allowed a specified time within which to qualify are to be construed together, however, and not as though they involved unrelated subjects. Award 1889. So read together, Rules 5 and 12 contemplate that an acceptable applicant must, in the sound discretion of the carrier's proper official, possess sufficient qualifications to be able to demonstrate his fitness and ability by a maximum of thirty days actual work on the position, performed with full cooperation on the part of department heads and others subject to the carrier's directions. Said rules do not mean that the applicant must be so presently qualified as to be able to immediately take over and fully discharge all the duties of the position on his own responsibility, without guidance or assistance. The carrier is required to give the position to the senior applicant, if his qualifications are sufficient, and it may not insist upon the right to make the assignment to the applicant who is best qualified. Award 2534. Employes claiming the right to an opportunity to qualify, under Rule 12, have the burden of establishing that they possess reasonable fitness and ability. Award 1147. But the past record of an applicant may be sufficient to create a presumption that he is entitled to an opportunity to qualify. Award 1481. If the carrier makes the contention that the manner in which an applicant discharged the duties of a former position disqualifies him for another, the burden is on it to show that such past services were deemed unsatisfactory as of the time they were rendered, and it may not raise that issue for the first time in passing upon the qualifications of the applicant for the new assignment. Award 402. The conduct of the carrier in dealing with the above matters is subject to review, not for the purpose of having this Board substitute its judgment for that of the carrier's but as a means of ascertaining whether there has been an abuse of discretion. Award 2556.

The carrier conceded by its bulletin that the position of Assistant Dispatcher and Chief Clerk, Third Trick, with which we are here dealing, is practically the same as that formerly designated as Chief Yard Clerk, Third Trick, the only difference being added responsibility and a change in the rate of pay. It is further admitted that the claimant filled the last mentioned position from June, 1933 to November, 1935, during which period he had six other employes under his supervision. Under the holdings of this Board, cited above, this constituted a prima facie showing that the claimant had sufficient fitness and ability to entitle him to thirty working days in which to qualify, in the absence of some showing to the contrary; and the carrier will not, at this late hour, be permitted to assert, for the first time, that the claimant's prior services as Chief Yard Clerk, Third Trick, were unsatisfactory, for the purpose of depriving him of an opportunity to qualify. Nor are we impressed with the carrier's further contention that the claimant demonstrated his unfitness or lack of ability when, on March 20, 1943, he surrendered up the position of Car Clerk on the same day that it was assigned to him. There is no showing that the duties of an Assistant Dispatcher bear any similarity to those of a Car Clerk, or as to the reasons that prompted the claimant to give up the latter position, beyond the fact that his action was voluntary.

As to the claimant's qualifications to ultimately fill the position which he sought, we express no opinion, further than to hold that on the showing made he was entitled to the opportunity provided by Rule 12 to demonstrate his fitness and ability. The carrier will be required to rebulletin the position and to compensate all employes adversely affected by its violation for loss of wages, retroactive to April 23, 1943, when Mr. Stone was improperly assigned.

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 carrier violated the Agreement as disclosed by the opinion.

AWARD

Claim sustained to the extent indicated in the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1944.