

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
STOCK YARDS DISTRICT AGENCY, CHICAGO, ILLINOIS**

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

1. That carrier violated the Clerks' Agreement when on December 28, 1942, it denied Clerk F. L. Wilmot, whose seniority date is July 26, 1928, the right to exercise seniority to Position No. 57 held by Clerk J. F. Clelland, who was employed in the same office with seniority date as of October 3, 1931, and

2. That Clerk Wilmot shall now be paid for wage loss suffered by reason of such violation from December 28, 1942 to October 2, 1943, and any and all other employees affected be reimbursed in like manner.

EMPLOYEES' STATEMENT OF FACTS: On March 24, 1942, Clerk Wilmot with seniority date as of July 26, 1928, was assigned to Relief Position No. 2, rate \$6.60 per day at the Stock Yards District Agency, Chicago, Illinois, which had been advertised for bid in Carrier's Bulletin No. 1 reading:

"BULLETIN NO. 1

Position Relief Clerk No. 2
Rate \$6.60 per day
Rest day—Sunday

Assigned

Mon. 8 am to 12 n—1 pm to 5 pm	Outbound, Relief on Position # 57
Tues. " "	Chgo. Prod. Trml. " 307
Wed. " "	Wood St. " 402
Thurs. " "	Claim Dept. " 172
Friday and Saturday, unassigned	

Duties Same as those performed by occupants of positions above described and such other as may be required.

Qualifications Must be able to operate a typewriter with sufficient speed to make 40 freight bills per hour at Chgo. Prod. Trml., re-consigned Perishable freight at Chicago Produce Terminal and Wood St. Terminal, with sufficient intelligence to protect icing, heaters and reconsigning, ventilating and stop-off instructions. Have sufficient interest and ability to make a concerted effort to route and rate outbound shipments.

or the intent of the rules awarded Mr. Wilmot the relief position in March, 1942, in the hope that the experience he would get on rate clerk duties while doing rate clerk work on the relief position would fit him for a regular position as rate clerk.

Mr. Wilmot substituted on position No. 57 on 39 different Saturdays during 1942, and in addition performed some service working with regular rate clerks on that and other rate clerk positions on the days his assignment provided that he be used for miscellaneous clerical duties, with the result that during the period between March 25 and December 26, 1942, he actually performed service on rate clerk positions on many more days than are specified in Section (a) of Rule 13, the qualifying rule.

His failure to satisfactorily perform the rate clerk work which was a part of this relief assignment influenced the Agency to abolish the position and blank all of the four jobs included in it on their rest days, even though such action necessitated paying the regular holders of these positions at the rate of time and one-half for work performed on Sunday, in compliance with the opinion of this Board, as stated in its Award 594 and similar awards.

The record in this case demonstrates conclusively that Mr. Wilmot's claim is without merit, is not supported by the rules and should be denied for the same reasons that similar claims were denied in the several Awards cited.

OPINION OF BOARD: The complaint is that the carrier violated the Agreement when it refused to permit the claimant to exercise his admitted seniority to replace the holder of the position in controversy. The petitioner contends that the claimant had previously demonstrated his fitness and ability for the position by filling it one day and assisting thereon two other days of each week from March until December, 1942. On the other hand, the carrier asserts and undertakes to establish by the record that the manner in which the claimant discharged his duties during that period establishes his lack of ability for said position.

In Award 2638 we said that an employee otherwise entitled to exercise seniority for a position has the burden of establishing that he possesses reasonable fitness and ability; that his past record may be sufficient to create a presumption of such fact; that where this is true the burden is upon the carrier to show that such past services were unsatisfactory as of the time rendered; and that the carrier's action in so determining is subject to review for an abuse of discretion.

The first question is, therefore, whether the claimant has established prima facie qualifications for the position. The particular service which the claimant was called upon to perform during the period he was assigned to the position under consideration was that of a rate clerk. We think it apparent that this calls for peculiar knowledge and training. There is evidence that the regular holder of this position was able to keep abreast of his work daily, but that on the days that it was filled by the claimant a very substantial amount of the work was left over and had to be performed by the regular man on the succeeding day. Some of the work of the position appears not to have been performed by the claimant at any time he was assigned to this service. Under these circumstances it would amount to a substitution of our judgment for that of the carrier for us to say that the claimant has demonstrated sufficient fitness and ability as to entitle him to an opportunity to demonstrate his qualifications. No such an abuse of discretion has been disclosed as would warrant the intervention of this Board.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.