Award No. 2726
Docket No. CL-2810

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: (1) Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement when on March 23, 1944, it assigned Mr. A. M. Jakoubek to the vacancy covered by bulletin No. 248 in the office of Agent and Freight Auditor, and declined to consider application of Martin B. Lechner, the senior employe.

(2) That Martin B. Lechner be assigned to the position described in bulletin No. 248 and compensated for all monetary loss suffered.

EMPLOYES' STATEMENT OF FACTS: On March 23, 1944, Mr. A. M. Jakoubek was designated as the successful bidder and assigned by bulletin to a position in the Agent and Freight Auditor's Office. The vacancy was bulletined March 21, 1944, No. 248 (Exhibit "A"). The position was awarded to A. M. Jakoubek, bulletin No. 248-A (Exhibit "B"), whose seniority date is December 28, 1942. The application of Martin B. Lechner with a seniority date of August 19, 1942 was not given consideration.

POSITION OF EMPLOYES: There is in effect an agreement between the parties bearing effective date of February 1, 1922 from which the following rules are quoted:

> "**Rule 1. Employes Affected.**—These rules govern the hours of service and working conditions of the following employes, subject to the exceptions noted in Rule 2:
>
> (a) Clerks.
> (b) Other office and station employes, such as.....;
> (c) Laborers employed ....."
>
> "**Rule 7. Promotion Basis.**—Employes covered by these rules shall be in line for promotion. Promotion shall be based on seniority, ability and fitness; ability and fitness being sufficient, seniority will prevail. This rule is not applicable to the excepted positions enumerated in Rule 2."
>
> Note: The word 'sufficient' as used in this rule is intended to more clearly establish the right of the senior employe to bid in a new or vacant position where two or more employes have adequate ability."
>
> "**Rule 8. New Positions.**—Seniority rights of employes to vacancies or new positions will be governed by these rules."
>
> "**Rule 10. Failure to Qualify.**—Employes awarded bulletined positions will be allowed thirty (30) days in which to qualify, and, failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employe."

bids for the position of No-bill and Tracing Clerk who had "adequate ability" to perform the duties in the opinion of the heads of the department, Agent and Freight Auditor F. E. Sawyer and his Chief Clerk, W. L. Eifert. As indicated in my letter of July 31, it necessarily devolves upon the Management to determine whether or not an employe is qualified to hold a particular position and its judgment of the qualifications of an employe should be accepted unless "arbitrarily or capriciously exercised." The language quoted is taken from Award No. 2529 of your Board in which reference is made to previous Award No. 2299. In view of this statement of principle, we do not believe that you want to substitute the opinion of this Board for that of the Agent and Freight Auditor, who is familiar with the qualifications of his men, and who filled the position in question after careful consideration of all the rules of the agreement and all the applications filed.

It will be noted from the correspondence shown as exhibits A, B, C, and D that the principal argument advanced by Mr. Lechner and his Organization failed to deal with the subject at issue, i. e., Mr. Lechner's ability to hold the bulletined position that is the subject of the claim. It is only his ability or inability to hold that particular position that is involved in this dispute. We are not now, nor ever have been, in disagreement with Mr. Lechner or his Organization as to his general office experience but do not believe that such experience alone warranted us giving him a trial on the position in question. As before stated, it is on basis of that experience, rather than adequate ability for the job in question, that the claim is prosecuted. However, that is not the issue. The claim must rise or fall in accordance with the provisions of the rules, which provide that seniority will apply in the case of two or more employes having "adequate ability." In the opinion of his superiors, Mr. Lechner did not have adequate ability to fill the position in question. As already indicated, the judgment of the officials in charge of the office should not be set aside by this Board unless "arbitrarily or capriciously exercised."

OPINION OF BOARD: Under the facts and circumstances of this particular case the claim of Martin B. Lechner will be sustained for net wage loss up to the date it be shown that the former occupant J. J. Kelly returned to his position, or to the date it be shown that Lechner was assigned to another position in event Kelly had not returned to his position prior thereto.

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 claim is sustained in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.