

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henry J. Tilford, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that C. D. Tyrell was senior bidder and should have been assigned to position of Warehouseman-Clerk, San Jose Freight Station, advertised for bids through Western Division Clerks' Circular No. 95-43 of June 3, 1943, and that Tyrell be paid for all wage loss sustained account of failure of Carrier to assign him in accordance with the rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to July 25, 1942, C. D. Tyrell was assigned to the position of Warehouseman-Clerk at San Jose Freight Station. No question arose concerning his ability to perform the duties of his position in a satisfactory manner. Through letter of Division Superintendent G. W. Curtis, dated July 25, 1942, C. D. Tyrell was advised that he was being removed from position of Warehouseman-Clerk, San Jose, due to alleged impaired vision.

On September 8, 1942, Tyrell was assigned to position of Trucker at San Jose Freight Station.

On numerous occasions between September 8, 1942 and June 3, 1943, Tyrell was required to assume the duties of position of Warehouseman-Clerk at San Jose. On all of these occasions he performed all of the duties of the position in a satisfactory manner.

Through Western Division Clerks' Circular No. 95-43 of June 3 position of Warehouseman-Clerk, San Jose, was advertised for bids. Tyrell made application for the position. An employe junior in service was assigned.

At no time has any determination been reached to indicate that Tyrell has not performed the duties of position of Warehouseman-Clerk at San Jose Freight Station.

POSITION OF EMPLOYEES: The following rule is cited from Agreement bearing effective date of October 1, 1930:

"Rule 29. Employes covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to Rule 2 positions.

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

does not void the instructions. As soon as knowledge of the violation of instructions reached the General Manager those responsible were taken to task and you may be sure there has been no recurrence.

Carrier regrets that Tyrell's vision makes it necessary to restrict him in any manner. He has been in the employ of the Railroad for more than 24 years, during which time he has always conducted himself properly and performed his duties to the best of his ability. Undoubtedly the cordial and cooperative relationship between Tyrell and his Supervisor was somewhat responsible for the Agent's failure to at all times comply with his Superintendent's instructions between July, 1942 and June, 1943. Whatever the circumstances may have been, the fact remains that in the opinion of competent medical authorities Tyrell's vision is such that he should not be permitted to handle the crane nor perform any duties which might endanger others. Numerous Awards of your Honorable Board have conceded Carrier's right to require fitness and ability for a position. One of the prerequisites for the occupant of the position of Warehouseman-Clerk is the possession of vision to enable him to satisfactorily handle the crane and do the duties connected with the position in such manner that he will not endanger others.

Carrier contends that it would be unfair, not only to the Railroad, but to Tyrell, fellow employes and patrons, for your Honorable Board to authorize his use in the position here involved.

OPINION OF BOARD: The Petitioner's sole contention is that the fact that C. D. Tyrell satisfactorily performed his duties as Warehouseman-Clerk while filling that position at frequent intervals after he had been relieved therefrom on July 25, 1942, is sufficient evidence of his fitness and ability to have entitled him to the position as senior bidder under Rule 29 when, on June 3, 1943, the position was advertised. However, no testimony was introduced by Petitioner to contradict the statement of Doctor George N. Hosford, an outstanding eye specialist, that Tyrell's vision was so impaired that he "certainly should not be at work where he might endanger others." Moreover it was not disputed that part of his work required the operation by him of an electric crane which on April 24, 1942, while being operated by him, came in contact with a truck and injured the driver.

Since where the question of personal safety is involved the Carrier is entitled to be "abundantly precautionous" (See Award 875) the Board is of the opinion that the Carrier was justified in its action.

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 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 6th day of April, 1945.