

Award Number 3092
Docket Number CL-3075

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that The Ogden Union Railway and Depot Company violated the terms of the existing agreement:

(a) In its refusal to pay Mrs. Helen W. Nalder the established rate of the Jumbo position (Car Record Clerk) after she had bid for and been assigned to the position and worked on the position on January 13th and 14th, 1944, and:

(b) The Company shall be required to pay Mrs. Nalder the established rate of the Jumbo position of \$6.27 for each of the two days, January 13th and 14th, 1944.

EMPLOYEES STATEMENT OF FACTS: Mrs. Helen W. Nalder established seniority with the Depot Company as a telephone operator February 7, 1942, and on the effective date of the present agreement she was accorded a common seniority date in the Master Terminal Seniority Roster of that same date, which seniority applied in the Yard Office and all other offices of the Ogden Union Railway and Depot Company. In effect, the creation of this master terminal seniority roster consolidated all seniority districts of this company into a single seniority district.

On January 11, 1944, bid bulletin No. 4 was published at the Yard Office and on January 13, 1944 on assignment bulletin Mrs. Helen W. Nalder was assigned to Jumbo Position as below noted:

Item 6. Jumbo Clerk 4PM to 12M Pos. 7-171 Rate \$6.27 per day

(Helen Nalder)

By agreement all bids open and close at the hour of 10:00 AM and the successful bidder shall take the position at the first starting time after 10:00 AM of the date of the assignment.

Mrs. Nalder was given notice by the Company of being the successful bidder. She reported for work at 4:00 PM, January 13, 1944, whereupon she was instructed by Assistant Chief Clerk, Mr. H. L. Gouesher, that she would be required to spend a couple of days on her own time, without pay, to qualify herself for the position and after she had qualified to the satisfaction of the

will not interfere with the decision of the Carrier when a reasonable basis for its decision exists."

See also Awards Nos. 2458, 2491, 2573.

A concise summary of the practical conditions of applying the requisites "seniority, fitness and ability" may be found in Award 2615, Referee Curtis G. Shake participating:

"Reasonable minds might differ however, upon the question as to whether the applicant Good was qualified for the position in view of his youth and lack of experience. The right to determine whether an applicant possesses requisite fitness and ability for a particular position rests primarily on the employer, however, and this Board will not substitute its opinion for that of the carrier's unless it is made to appear that its action was so capricious, arbitrary and unreasonable as to amount to an abuse of discretion. Awards 2031, 2350 and 2299. No such issue is tendered here and we must conclude that the claimant's contention that he was entitled to the position by reason of seniority is without merit."

In your Board's Awards 2638 and 2673, Referee Curtis G. Shake participating, the contention that senior applicant was entitled to the position was considered and we quote the following from Award 2673:

"In Award 2638 we said that an employe 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."

In summary, it is the carrier's position that "seniority," "fitness," and "ability," constitute the elements of eligibility under the rules and operative at the time the assignment is made. Further, that in relaxing the literal requirements and assigning the senior employe and permitting him to qualify, for reasons explained in fore part of our position, the benefits flowing therefrom were shared by the employes, and gives no valid support for the claims for pay while breaking in. Finally, it is the carrier's position that there is no support in any rule for the theory of "potential" fitness and ability which is the basic and real issue brought into dispute in these cases.

OPINION OF BOARD: On January 13, 1944, the Claimant was assigned to the position of Jumbo Clerk. On reporting for work she was informed that she would be required to put in a couple of days on her own time to learn the duties of the position. Claimant worked on January 13 and 14, 1944, under the direction of one of the Jumbo clerks on duty. She was thereupon approved as being fully qualified to do the work of the position. Claimant contends that she should be compensated for the two days spent in familiarizing herself with the duties of the position.

The record shows that Claimant had no previous experience in the class of work to which she was assigned. She had been a telephone operator from the time she was first employed until assigned to the Jumbo Clerk's position. Under these circumstances we cannot conclusively say the Claimant was sufficiently qualified for the position. Consequently, the Carrier is the proper party to decide as to the sufficiency of Claimant's qualifications to handle the position on the same day it was assigned to her.

Whether an employe requires preliminary training for a position is a matter exclusively for the carrier to determine and a determination once made will be sustained unless the action of the carrier appears to have been capricious or arbitrary in arriving at such result. The evidence before us is such that the qualifications of the Claimant for the position sought can be determined only in the exercise of sound judgment. Under such circumstances, the Board cannot substitute its judgment for that of the carrier.

The Organization contends that as Claimant was assigned the position, that she is entitled to compensation for the time spent in qualifying herself to perform the duties of the position. An assignment to a position will not of itself entitle an employe to compensation. He must perform the duties of the position to which he was assigned before he can be compensated. The Claimant here did not occupy the position. An experienced Jumbo clerk occupied the position and was paid therefor. Claimant was learning the duties, not only for the benefit of the Carrier, but for her own benefit as well. We know of no rule which requires the Carrier to compensate one who is fitting himself to perform the duties of a new position, even though he was regularly assigned thereto. We do not hesitate to say that Carrier's directions with reference to one qualifying on his own time for a position assigned to him must not be capricious or arbitrary. We think that in requiring Claimant to spend two days in qualifying herself for the position assigned to her constitutes a reasonable exercise of managerial judgment and that no basis for an affirmative award exists.

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 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 there was no violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of January, 1946.