

Award Number 3102

Docket Number CL-3030

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**

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When on January 13, 1942, it assigned Mr. A. E. Cole to vacancy caused by Bulletin #341 in the Auditor of Disbursements Office, St. Paul, Minnesota, and refused to assign the position to Miss Laura J. McCarthy, whose seniority date is September 3, 1918, and who was the senior bidder.

(2) When after agreeing on September 2, 1943, to place Laura J. McCarthy on the position known as ACE-27, and give her a good fair trial to qualify on the position, it removed her from the position at the expiration of thirty (30) days without her having a fair trial.

(3) That Laura J. McCarthy be reassigned to position ACE-27, and compensated for the difference in wages received and what she would have received had she been properly assigned and allowed to remain on this position.

JOINT STATEMENT OF FACTS: On January 7, 1942, the Auditor of Disbursements issued Bulletin No. 341, advertising position ACE-27 for bid. This position was assigned to Mr. A. E. Cole by bulletin number 346, dated January 13, 1942, notwithstanding the fact an application had been filed within the bulletin period by Miss Laura J. McCarthy, an employe senior in service to Mr. A. E. Cole.

The employes representative protested this assignment on January 15, 1942, as follows:

"520 G. N. Ry. Bldg.,

St. Paul, Minn., January 15th, 1942.

"Mr. H. J. Sturner, Auditor Disbursements,
Great Northern Ry. Co.,
St. Paul, Minn.

Dear Sir:

"Kindly refer to Bulletin No. 341 issued by you on January 7th, 1942, advertising position ACE-27 for bid. This position was assigned to Mr. A. E. Cole by bulletin No. 346 dated January 13th, 1942, not-

In Award 1147 your Board held:

"The applicable rules of the Agreement governing the exercise of seniority embrace fitness and ability, as well as seniority, as a relevant consideration. Only when there is sufficient fitness and ability is it provided that seniority shall prevail. In these circumstances a lack of adequate fitness and ability on the part of the applicant would clearly constitute a valid ground for the carrier's departure from seniority.

Even on the assumption that the rule dealing with 'time in which to qualify' (which, by its express terms, refers only to 'employees entitled to bulletined positions') should be deemed to be applicable to such displacements of junior employees as are here involved, it would be necessary to establish the existence of reasonably sufficient fitness and ability before the obligation would attach to the carrier to afford an opportunity to the applicant to qualify for the positions."

In summing up, therefore, the Carrier believes it is clearly shown that the following are the pertinent facts:

First, the work in the Auditor of Capital Expenditures Sub-Department is of a nature, aside from that applicable to the lowest rated position therein, requiring a high degree of railroad accounting skill and a good acquaintance with all I. C. C. accounting classifications;

Second, that while Miss McCarthy had worked on various positions in the Auditor of Disbursement Office requiring a limited knowledge of accounting and an acquaintance with a limited number of accounts, she had not, at any time, worked on any of the positions in the Capital Expenditures Sub-Department;

Third, that the position on which she bid was not one of the lower rated positions normally considered the training or apprenticeship positions in this sub-department, but one carrying a higher rate and requiring basic training within the sub-department to enable her to satisfactorily perform the duties thereof;

Fourth, that there was available another applicant for the position with considerable previous experience and training in the Capital Expenditures Sub-Department;

Fifth, that while the Carrier might well have considered itself entirely justified, under such circumstances based on opinions expressed by your Honorable Board, in not even giving Miss McCarthy an opportunity to demonstrate her fitness to fill this position; as a matter of fairness, such opportunity was given her;

Sixth, that during such training period she was given as much assistance as any employe might reasonably expect and that, based on the record as disclosed in Exhibits 1, 2, 3, 4 and 5, she failed to demonstrate that she had the necessary qualifications to satisfactorily fill the position, and the Carrier could not reasonably be expected to continue beyond the 30-day trial period to train Miss McCarthy for the much longer period which would obviously be required to enable her to perform the duties of the position, when an employe qualified by previous training was available to fill such position without any additional training.

The Carrier, therefore, believes that its action in this case, under the conditions and circumstances enumerated, was in full accord with the principles previously set up in the opinions of your Honorable Board, and that you will so hold.

OPINION OF BOARD: On January 7, 1942, the Carrier advertised position ACE-27 in the office of the Auditor of Disbursements at St. Paul for bids. The application of the Claimant for said position was rejected in favor of

another who was her junior in point of seniority. This action was protested by the Petitioner, and on September 2, 1943, the parties reached an understanding, evidenced by an exchange of letters, by which the Carrier agreed to give the Claimant "a good and fair trial" for thirty days and to assign her to said position if she could thereby demonstrate her qualifications. The Claimant thereupon served from September 20 to October 20, 1943, at the end of which period she was verbally informed by the Carrier's Auditor of Disbursements that she had failed to qualify. A hearing was demanded by the Claimant under the provisions of Rule 31 of the Agreement, which was accorded her on November 2, 1943. At the conclusion of the hearing the Carrier again refused to give the Claimant the assignment, and this proceeding followed.

It is here charged by the Petitioner that the Carrier did not give the Claimant the "good and fair trial" contemplated by the understanding of September 2, 1943. The demand is that the Claimant be ordered reassigned to position ACE-27 and that she be compensated for loss of wages retroactive to the time she should have been so assigned.

The transcript of the hearing comprises more than 150 pages of the file before us; and the record is burdened with a mass of irrelevant and immaterial charges and countercharges. We have, however, endeavored to extract therefrom what we deem to be the controlling facts. Among these are the following:

1. The Master File in Docket No. CL-756 (p. 26), to which this Claimant was a party and which resulted in Award No. 770 in her favor, discloses that as early as October 1, 1937, the Carrier's responsible officials had expressed themselves by letter to the Petitioner as entertaining the opinion that position ACE-27, here involved, was such as to "make it advisable not to employ women thereon."

2. On June 23, 1944, the Carrier's Assistant to the Vice-President, who handled this matter for it, advised the Petitioner's General Chairman, in defense of its refusal to assign the Claimant to the position here in controversy after a qualifying trial, as follows:

"Had Miss McCarthy desired to enter the department handling capital expenditures, she had many opportunities during previous years to bid in one of the lower rated and less important positions in that department, which would have qualified her at a later date to handle the work on one of the more important positions such as the one on which she bid. However, she did not choose to do this but instead confined her activities as a clerk to other departments in the office until such time as one of the highest rated jobs became vacant and then bid on same without any qualifying experience in that branch of work."

3. In reply to the Employees' Position, the Carrier states in the record that:

"... certainly it cannot be reasonably expected that the Carrier would have to fill one of its higher rated, more responsible positions with an employe whose previous experience had been inadequate to permit her to perform the duties of such position, when another fully qualified employe with 25 years of experience in capital expenditure work and whom it would be unnecessary to coach, instruct or otherwise aid in any way towards the fulfillment of all the duties of the position, was available and an applicant therefor."

It is sufficient to say, with respect to the above that: (a) the Carrier's contractual obligations did not permit it to discriminate against the Claimant on account of her sex; (b) the Claimant was eligible to bid for position ACE-27, and the Carrier was not authorized to impose conditions on that privilege not reflected by the terms of the Agreement; and (c) "fitness and ability", as

those terms are used in Rule 4 of the Agreement, mean reasonable fitness and ability to learn and perform the duties of the position, to be demonstrated by a thirty-day trial under proper supervision and direction,—not superior immediate fitness and ability resulting from actual past experience in performing the work incident to the particular position. Award No. 2427.

Without extending this opinion to quote the evidence appearing in the record, it is sufficient to say that it affirmatively appears that the Carrier did not give the Claimant, during her thirty-day trial period, that cooperative guidance and assistance contemplated by the spirit of the Agreement; that, notwithstanding, she performed approximately 57% of the volume of work normally accomplished by a fully competent and experienced employe on the position; and that her performance showed marked improvement in quantity and quality toward the end of her trial period. These facts, when considered in the light of the Carrier's attitude toward the Claimant and her application, lead us to the conclusion that there was no good-faith effort to conform to the terms of the Agreement.

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 its Agreement to give the Claimant a good and fair trial; and that the Carrier abused its discretion in determining that the Claimant had not demonstrated reasonable fitness and ability for the position in controversy.

AWARD

Claim sustained and Carrier ordered to reassign the Claimant to Position ACE-27 as of October 21, 1943; also to compensate her for the difference in wages received and what she would have received had she been so assigned.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.