

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway Clerks that:

(1) The Carrier violated the Clerks' Memorandum of Agreement dated November 4, 1942 modifying Rule 16 of the Clerks' Agreement by failing to recognize a bid for a vacancy of File Clerk in the Office of the Assistant General Freight Agent, Cleveland, Ohio, which bid was submitted by John F. Conroy, a Class 1 employe employed in the office of Superintendent of Passenger Transportation at Cleveland, Ohio, with a seniority dating of August 7, 1922 —said Carrier awarding the position to John F. Jesse, who had not submitted any bid for the vacancy and who is a junior employe, employed as Yard Clerk at Elyria, Ohio, with a seniority dating of January 26, 1943.

(2) The Carrier now be required to comply with the Clerks' Modified Rule 16 by assigning John F. Conroy to the vacancy of File Clerk for which he had bid at the time said position was bulletined.

EMPLOYES' STATEMENT OF FACTS: Under date of August 25th, 1944, a vacancy of File Clerk was bulletined in the Office of the Assistant General Freight Agent at Cleveland, Ohio, which bulletin expired August 31st, 1944.

No bids were received for this vacancy from the regular forces of that office, but a bid dated August 25th was filed with Mr. R. H. Doult, Assistant General Freight Agent, by Mr. John Conroy, an employe in the Superintendent of Passenger Transportation's Office for the vacancy under the provisions of our Modified Rule 16.

When the time limit of the bulletin expired, Mr. Doult failed to acknowledge, decline, or consider Mr. Conroy's bid and the vacancy was assigned to Mr. John F. Jesse from Elyria, Ohio, who had not filed any bid for said vacancy during the period of time the vacancy was advertised by bulletin.

Conferences were held with Mr. Doult, Assistant General Freight Agent, on October 9th, 1944, with Mr. W. D. McVey, General Freight Agent, on appeal from Mr. Doult's decision under date of December 1st, 1944, and a final appeal to Mr. J. E. Anderson, Freight Traffic Manager, under date of March 6th, 1945, which appeals resulted in their denial of our claim and therefore left us no alternative other than to submit our claim to the Third Division of the National Railroad Adjustment Board for adjudication.

with seniority rights in another district and in the penultimate paragraph of the "Opinion of Board" said—

"We have been over the record with the very greatest care to see if there is any reasonable ground on which this Board would be justified in over-ruling the decision of the Carrier. We can find none. It is not a question of what we would have done had we been in the Carrier's place. It is solely a question whether the Carrier has shown reasonable ground for its action."

In Award 2350, *Clerks vs. Union Railway Co.*; the Third Division with Edward F. Carter as Referee denied the claim of a clerk subject to the agreement for a position which had been awarded to an employee outside the scope of the agreement, and, in the "Opinion of Board", said in part—

"Whether an employee is qualified for a position is a matter exclusively for the Carrier to determine, and such a determination once made will be sustained unless it appears that the action of the Carrier was capricious or arbitrary."

An almost endless number of other awards might be referred to in further support of the carrier's position in this case, which, in brief, is that the supervisor in charge who is familiar with the experience and qualifications of applicants must be the judge in determining the fitness and ability of an employee who aspires to a particular position.

CONCLUSION:

1. Claimant Conray was not qualified for the File Clerk position to which he aspired;
2. John F. Jesse, assigned to the File Clerk position September 27, 1944, was qualified on the basis of experience, fitness and ability;
3. The carrier, in awarding the File Clerk position to Clerk Jesse, did so in good faith and without prejudice;
4. Well-reasoned and numerous precedents without exception support the carrier's position;
5. The claim is wholly without merit, not supported by any contractual obligation, and should be denied.

OPINION OF BOARD: On August 25, 1944, the Carrier bulletined a position of File Clerk in the office of Assistant General Freight Agent, which bulletin expired on August 31, 1944. No employees in that seniority district bid for the position. On August 25, 1944, Claimant, an employee occupying a position in another seniority district, made application for the position. On August 20, 1944, John F. Jesse, an employee occupying a position in another seniority district, made application for the position. Jesse, though junior to Claimant in seniority, was assigned the position. Claimant contends that this handling was in violation of Rule 16 of the current Agreement as revised effective October 6, 1942. This rule as revised provides:

"Employees filing applications for positions bulletined in other seniority districts, where no applications are received from employees on roster of district in which bulletined position exists, or upon the opening of new stations or offices, will, if qualified, be given preference over non-employees. If assigned to the bulletined position, such employees will rank from date of first service thereon and shall continue to accumulate seniority, for displacement purposes only, on their former roster."

The position was correctly bulletined in the seniority district where the position was located for the five day period required by the rules. No employee of that seniority district placed a bid. Consequently, applicants for the position from other seniority districts were entitled to preference, if qualified, over non-employees. In selecting a qualified employee from another seniority

district, seniority need not be respected under the cited rule. If an applicant from another seniority district is qualified, the Carrier may assign him the position irrespective of seniority or superior qualifications on the part of other applicants from other seniority districts. The Carrier found Jesse to be qualified. This being true, he could properly be assigned the position under revised Rule 16, and no other employe can have any legitimate cause for complaint, no matter how great his seniority or how superior his qualifications.

It is urged, however, that Jesse's application was not subject to consideration because it was not made during the period the bulletin was required to be advertised. The rule does not so state. The bulletin was required to be advertised only in the seniority district where the position was located. It is effective, therefore, only as to the employes of that seniority district. Under the rule as written, no employe in the seniority district where the position was required to be bulletined having placed a bid, the Carrier can properly consider any application before it from another seniority district, no matter when it was filed. In fact, it is bound to do so before filling the position with a non-employe. Such being the case, there is no basis for an affirmative award.

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 there was no violation of Agreement provisions.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1946.