

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned Mr. E. A. Petertyl to position of Group Head, Passenger Redemption Bureau, Office of Auditor of Passenger and Station Accounts, 63rd Street, Chicago on position No. 39 advertised on Vacancy Bulletin No. 25 on February 7, 1945 and declined to consider application of J. J. Stopka who was senior to Mr. Petertyl.

2. That J. J. Stopka be assigned to position No. 39 covered by Bulletin No. 25 and compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: On Feb. 7, 1945 position No. 39, title Group Head, Passenger Redemption Bureau, rate 9.63 per day was advertised on Vacancy Bulletin No. 25 in office of Auditor of Passenger and Station Accounts, 63rd St., Chicago.

The position was awarded to E. A. Petertyl with seniority date of May 2, 1932. The application of J. J. Stopka with seniority date of July 16, 1927 was not given proper consideration. Mr. Stopka's rate of pay is 8.80 per day.

The position of group head in this bureau, as in other bureaus, works under the direction of a Bureau Chief or Head Clerk. There are a number of group head positions in the various offices at 63rd St. accounting offices. They are bulletined positions covered by all rules of the Clerks Agreement. Up to the time of this grievance there had not been any extraordinary talent required of the successful applicants for such positions. On this position the Carrier stated its requirements to be:—

“Must have knowledge of interline fares and divisions, also be an able correspondent. Position requires ability to instruct other employees and to supervise the work in the Refund Bureau.”

There were five bidders on this position. Three were senior to Mr. Stopka and Mr. Petertyl was junior. The three senior men had but very little experience on the work in question but had bid in same to protect their promotion rights in case the Carrier was going to break someone in on this position as they had done on other positions in the passenger department. After the Auditor had interviewed them and the work of the position discussed with them they withdrew their bids.

findings the Board may make on this question is on the basis of the facts of record which are conclusive in showing that Carrier did fully consider the application of Mr. Stopka and its decision was made accordingly. The fact is the Brotherhood is protesting the decision not the lack of consideration, on the part of the Carrier. With regard to Section 2 of the employees' claim, the Carrier maintains that the employees have made no showing that the claimant had the necessary fitness and ability, in accord with the rule, to discharge the duties and functions thereof and it is their responsibility to do so. See Third Division Awards Nos. 2099, 2865 and Second Division Awards Nos. 17 and 18.

The Carrier maintains it has shown through its introduction of facts of record and discussion that the employees' claim is without merit for the following reasons:

1. J. J. Stopka, the claimant, was considered for the position—as proven by the Brotherhood's proposed joint statement of facts, excerpts of which are hereinabove quoted.
2. Rule 6 has consistently, through the years from its inception, been applied in accord with the Carrier's explication thereof as proven by tabulation of positions bulletined and awarded.
3. The employees have evidenced their concurrence in the interpretation and application of Rule 6 as proven by excerpts from their proposed joint statement of facts and tabulation of positions contained in this submission.
4. The claimant was shown to have been lacking in fitness and ability for the disputed position at the time he submitted bid therefor and no evidence has been brought forth to show the Carrier's finding is incorrect.

OPINION OF BOARD: On February 7, 1945, position No. 39, titled Group Head, Passenger Redemption Bureau, rate \$9.63 per day, was advertised on Vacancy Bulletin No. 25, in Office of Auditor of Passenger and Station Accounts, 63rd Street, Chicago. The position was awarded E. A. Petertyl, with seniority date of May 2, 1932. The application of J. J. Stopka, with seniority date of July 16, 1927, was rejected. There were five applicants for this position, three of whom withdrew after having been interviewed, feeling they lacked the necessary qualifications. Position No. 39, covered by the bulletin in the instant case, is that of Head Refund Clerk and requires fitness and ability to adjudicate all classes of passenger fare refunds, claims and ably correspond with patrons of the Carrier with respect to such claims, as well as the fitness and ability to supervise and direct the work of ten (10) other employees in the Bureau, i. e., must have knowledge of interline fares and divisions.

The Carrier asserts it gave Stopka full and adequate consideration for the position to which he aspired, with the result that the Carrier concluded Stopka had no previous experience in the Passenger Fare Redemption Bureau prior to April 2, 1945, which was two months after he bid for the position in dispute; that he was awarded a temporary vacancy in the Bureau as an Interline Refund Clerk for which he was a junior applicant, in such capacity he handled 20% fewer claims than his predecessor and sought and received instruction and direction from the Bureau; that his previous work was in subordinate positions, and that by his admission, he had no previous experience in instructing other employees on any kind of work; and at the time he bid for the position he had performed absolutely no work or service in the Bureau in which it existed; that Stopka admitted he had not sufficient ability to perform the work.

The record of Stopka discloses that he had 18 years' service in the various bureaus, in this office, with the last three years in the Passenger Interline Bureau, and he claims to be familiar with rates and divisions and passenger work, and has been assistant to Bureau Heads in several of the departments in this office, and possesses the basic knowledge of rates, divi-

sions, interline fares, tariffs, which is valuable experience when issuing refunds; also, he has exercised supervisory duties on occasions.

It is the contention of the Petition that the Carrier has violated Rule 6 and Rule 9 of the applicable Agreement. Rule 6 provides:

"Employees 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 the excepted positions.

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

Rule 9 provides:

"Employees awarded bulletined positions and failing to qualify within thirty (30) days, shall retain their seniority rights and may bid on any bulletined position, but may not displace any regularly assigned employee."

It is the function of management to select employees. Except when it has limited itself by contract, the right of selection is wholly within the direction of management. Award 3151. Under the cited rule (Rule 6 in the instant case) the Carrier has the right to determine, in the first instance, the fitness and ability of applicants for the position. Award 2427. Fitness and ability for promotion to a position of greater responsibility must be commensurate with the requirements of the position to be filled. Award 2990. Fitness and ability does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance. Award 2427. In connection with this statement taken from Award 2427, in Award 3139, cited by the Petitioner, involving the same carrier and organization as in the instant case, this Board said that Rule 6 does not require experience before an employee can bid for new work. If that were the case, it would be practically impossible to secure employees for new positions. The rule requires fitness and ability. The fact that under Rule 9, there is a thirty-day qualifying period indicates that employees may not have experience in new work, and yet are given the opportunity to qualify to determine if their measure up to the standard of fitness and ability. We are in accord with this language used in Award 3139. As previously pointed out, it is the carrier who, in the first instance, selects the employee on a basis of fitness and ability. After the carrier has determined that a senior applicant lacks sufficient fitness, the burden is upon such applicant to establish that he possesses sufficient fitness and ability to occupy the position. Award 1147.

We cannot substitute our judgment for that of the Carrier in matters of this kind. Our function is limited to a review of the Carrier's decision to ascertain whether it was made in good faith upon sufficient supporting evidence or whether it was the result of capricious or arbitrary action without reasonable support in the record before us.

From the record it is apparent that applicant Stopka has for a number of years performed satisfactory service for the Carrier, and the Carrier makes no complaint with reference to his work except that he has filled subordinate positions which were not the kind that would be of assistance in qualifying him for the position in question. One instance is pointed out that Stopka when holding a position for a period of 30 days failed, within 20%, of handling that position in the same manner as his predecessor. There is no evidence in the record that he could not have mastered the position, and no evidence in the record as to what his predecessor had accomplished in the first 30 days he held the position. Award 3139.

We conclude that under the circumstances the Carrier has violated the Agreement and that J. J. Stopka should be awarded the position in dispute and afforded the opportunity to qualify therefor as provided for by Rule 9 of the applicable 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 Employees involved in this dispute are respectively carrier and employees 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 J. J. Stopka should be awarded the position in dispute and afforded the opportunity to qualify therefor, as provided for by Rule 9 of the applicable Agreement.

AWARD

Claim sustained to conform to the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.