

Award No. 3480

Docket No. CL-3539

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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 refused to consider the application of Maxine Peterson for position of checking clerk, rate 7.065 per day in office of Auditor of Freight Receipts, 63rd Street, Chicago.
2. Mrs. Maxine Peterson be compensated for the difference between 7.06 1/4 and 6.52 per day (rate of checking clerk and comptometer operator positions) from October 2, 1944 to December 17, 1944.

JOINT STATEMENT OF FACTS: Mrs. Maxine Peterson had been on an authorized leave of absence. During her absence position No. 550-203, checking clerk, rate \$7.065 per day was advertised on bulletin and awarded to an employee junior to her.

Rules 6 and 16 of the controlling agreement read:

"Rule 6—Promotion Basis. 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 16—Bidding After Absence. An employee returning from leave of absence, may return to former position, or may,

The Carrier has, in its correspondence with the Brotherhood, set forth in detail its position in this case and nothing has been submitted by the employees to disprove or refute the statements of the Carrier. This Board has so frequently and consistently held it is the prerogative of management to determine fitness and ability that it is not a matter that can be questioned now. Awards 96, 396, 1147, 1588, 2031 and 2142. In this case the Carrier based its determination on a thorough study and investigation of Mrs. Peterson's background of education, training and experience, together with her employment and service record with this and other companies, and her attitude as evidenced by her attendance and failure to avail herself of the opportunity to educate herself sufficiently for clerical positions. The decision that the claimant was not fit and able to handle the position was a result of a full and mature consideration of the claimant's fitness and ability by her supervisors. The employees do not say Mrs. Peterson had the requisite fitness and ability to handle the position, they merely assert that because she was senior to the incumbent she should have been permitted to displace on the position and they belatedly asserted for her many attributes of which the Carrier had no previous knowledge—that the Carrier recognizes the displacement rights of employees is evidenced by the fact that Miss Dorothy Nelson, senior to both Mrs. Peterson and the incumbent, was permitted to displace on the position on November 30, 1944. Even though Mrs. Peterson had been allowed to displace on the disputed position she would only have occupied it from October 2 to November 30, 1944.

With regard to the literal claim of the employees that the Carrier " . . . refused to consider application of Maxine Peterson . . . " as covered in Section 1 of their statement of claim, it is the position of the Carrier that the only finding 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 Mrs. Peterson and its decision was made accordingly. The fact is the Brotherhood is protesting the decision, not the lack of consideration, by 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 presentation of facts of record and discussion that the employees' claim is without merit for the following reasons:

1. Mrs. Peterson, the claimant, was considered for the disputed position—this is admitted by the employees in the Joint Statement of Facts. Inasmuch as the employees' claim, (1), is that "The Carrier violated the agreement when it refused to consider the application of Maxine Peterson . . . " the Division is confined to this question in deciding the employees' claim. The employees admit that consideration was given, therefore, the claim must be denied. Claim (2) must also be denied, since it is based on Claim (1);
2. Rule 6, has been applied through the years from its inception in a manner consistent with the Carrier's explication thereof as is evidenced by tabulation of positions bulletined and awarded both junior and senior applicants and the employees' concurrence therein is established thereby;
3. The claimant did not have the requisite fitness and ability to fulfill the functions of the disputed position and the employees do not contend that this is the case.

OPINION OF BOARD: Based upon all the facts and circumstances of this particular case, the Board is not disposed to disturb the action of the carrier.

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 employe involved in this dispute are respectively carrier and employe 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 Board is not disposed to disturb the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.