

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, Referee

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**PARTIES TO DISPUTE:**

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

**CHICAGO UNION STATION COMPANY**

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

(a) The carrier (Chicago Union Station Company) violated the Clerks' Agreement April 23, 1946 when it improperly removed Mrs. Clausius from the position of Information Bureau employee, and

(b) That Mrs. Marie Clausius be compensated in full for all monetary loss sustained April 24th to May 19th, 1946, both dates inclusive, by reason of such violation.

**EMPLOYEES' STATEMENT OF FACTS:** Employee Clausius entered the service of the Chicago Union Station Company as Information Bureau employee May 10, 1943 and continued working in that capacity until October 19, 1943 when she applied for and was assigned to position classified as Ticket Seller.

Mrs. Clausius continued working as Ticket Seller until the close of business April 16, 1946 when her position was abolished, and Mrs. Clausius effective April 17th, 1946 exercised displacement rights to Information Bureau employee position No. 4, where she again performed the same work she had performed from May 10, 1943 until October 19, 1943. On April 23, 1946 Mrs. M. B. Griffith, Manager of the Information Bureau handed Mrs. Clausius a letter advising that she could continue working on her own time for the purpose of qualifying on Information Bureau employee position No. 4 which she had acquired, effective April 17th through the exercise of displacement rights, Mrs. Griffith's letter reading as follows:

"Chicago, Illinois,  
April 23, 1946.

Mrs. Marie S. Clausius,  
Information Bureau Employee.

Dear Mrs. Clausius:

Since you exercised your seniority rights on Position No. 4 Information Bureau Employee, your services have not been satisfactory, and under the provision of rule 16, you must qualify within 30 days. You may use the balance of the 30 days period in which to qualify on your own time. If, during this period you consider yourself qualified, you will be returned to your position at your request. If you do not qualify within the 30 day period, you will be

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, sub-Section (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it, and is not empowered to pass upon the abilities or other qualifications of the claimant. To grant the claim of the employes in this case would require the Board to disregard the agreement between the parties thereto, and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any action which might be productive of such an end result.

### CONCLUSION

The Carrier has established that, under the applicable agreement, the claimant is not entitled to the compensation claimed.

The Carrier, therefore, respectfully submits that your Honorable Board should dismiss the claim of the employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all the same. Oral hearing is desired.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The System Committee claims that the Carrier violated their agreement when, on April 23, 1946, it removed Mrs. Marie Clausius from her position as an Information Bureau employee. It asks that she be compensated for all monetary loss sustained between April 24th and May 19, 1946 by reason thereof.

The record discloses that the claimant entered the services of the Carrier on May 10, 1943, as a student in its Information Bureau. She satisfactorily completed her course and, on August 1, 1943, was assigned to a position as a Junior Information Bureau employe and continued in that capacity until October 17, 1943. On the latter date she bid for and was assigned to a position as Ticket Seller. On April 15, 1946 the Carrier abolished the position she was then occupying. She thereupon exercised her displacement rights to position No. 4 of the Information Bureau, which position required her to perform approximately the same duties as she had performed as an employe therein from May 10 to October 17, 1943. She took a refresher course on April 17, 1946 to reacquaint her with the duties thereof and, on April 18, 1946, she was assigned to work the position with pay. She worked the position on April 18, 19, 20, 21 and 23, 1946 and was paid therefor; April 22, 1946 was her regular relief day.

Carrier observed claimant's work during this period and came to the conclusion that she was not qualified, whereupon, on April 23, 1946, the Manager of the Information Bureau advised her that her services were not satisfactory. She was also advised that she must qualify within 30 days and that she might use the balance of the 30 day period in which to do so but she would be on her own time. Claimant returned to her position on April 24th and signed the clock at 7:20 A.M. The manager of the Bureau then advised claimant she was working on her own time and requested her to sign a statement to that effect, which claimant refused to do. The manager then told her she could stay but couldn't work her position and took from her her

"telephone set." Claimant remained until 9:30 A.M. when she signed out and did not return until May 20, 1946.

On April 25, 1946, she was advised by letter from the manager, dated April 24, 1946, that she was welcome to post (qualify) for the position and that she would receive full cooperation from the supervisory staff but such would be without pay.

By letter dated May 16, 1946, claimant was advised that on May 1, 1946 a senior employee was assigned to position No. 4 and advised her she could take such steps as she felt necessary to protect her seniority. Claimant thereupon returned to work on May 20, 1946 as an employee in the Information Bureau and is presently performing the duties of that position.

It thus appears that on May 1, 1946 a senior employee exercised his seniority rights to position No. 4. However, claimant was not notified of this until May 16, whereupon she exercised her seniority rights on May 20th. But this is not material for it is apparent, from what took place on May 20th, that claimant had sufficient seniority so that she could have at all times, during the period herein involved, held a position in the Information Bureau provided the Carrier had advised her she had been displaced from her former position, if they considered she still held it, and that they would recognize her seniority displacement rights, in view of the fact that they had advised her she was not qualified.

Rule 16 (a) and (c) of the parties' agreement provides:

"(a)—Employees entitled to bulletined positions will be allowed thirty (30) days in which to qualify, and failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

(c) Employees will be given full co-operation of department heads in their efforts to qualify."

It will be seen from the facts, as they have been herein set forth, that when claimant obtained, through her seniority, the right to position No. 4 in the Information Bureau that the Carrier, after one day refresher, assigned her to the position with pay. That thereafter, and within 30 days, it again sought to place her on a qualifying basis and without pay. This was based on the Carrier's decision that she was not qualified to do the work. In this we think the Carrier was in error.

While the Carrier may in the first instance, and before it assigns an employee to a position on pay, for good reason require employees to qualify for positions on their own time, see Award 3092, however, such right does not continue to exist after the Carrier assigns an employee to a position on pay, as was here done. See Award 899. Thereafter the Carrier cannot disqualify an employee until the time provided for in the Rules of the Agreement has expired for the provisions thereof give an employee a definite period in which to do so, which period the Carrier can neither shorten nor deny. Carrier therefore violated the agreement when it disqualified the claimant and denied her the right to work with pay. Such violation was the cause for her being unemployed during the period for which she here seeks to be paid.

**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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1948.