

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

H. Nathan Swaim, Referee.

**PARTIES TO DISPUTE:**

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Harry M. Zarker now be assigned to Position No. 323, Investigator, Overcharge Claim Division, and that Zarker and all other employees affected be compensated for wage loss suffered retroactive to January 2, 1945, the date improper assignment was made.

**EMPLOYEES' STATEMENT OF FACTS:** On January 2, 1945, Mr. Charles H. Dale, seniority date November 21, 1907, was assigned to position of Investigator, Overcharge Claim Department, office of Auditor of Freight Accounts, Topeka, Kansas, rate \$227.46 per month, and favorable consideration of the application of Mr. Harry M. Zarker, the senior qualified applicant, seniority date September 12, 1907, Division Clerk Interline Department, also in office of Auditor of Freight Accounts, rate \$223.11 per month, was denied.

Mr. Zarker filed his bid for the position on January 2, 1945 in accordance with the provisions of Article III, Section 8-b of the current agreement, effective October 1, 1942.

**POSITION OF EMPLOYEES:** It is the position of the Employees that Carrier's action in refusing to assign to position of Investigator, Overcharge Claim Department, the senior qualified applicant therefor violated the letter and spirit of the current agreement, effective October 1, 1942, and specifically the provisions of Article III, Sections 1-a, 1-c, 3, 4, 6 and 8-b which read as follows:

**ARTICLE III**

"Section 1-a. Seniority districts shall be as per Appendix 'A' hereto.

**APPENDIX "A"**

**Seniority Districts**

(Accounting Dept.—Topeka only)

Topeka—Auditor of Disbursements.....	Department
Auditor of Freight Accounts.....	Department
Auditor of Passenger Accounts.....	Department
Machine Bureau .....	Department

ker's case, the organization claims that Mr. Zarker had the right, based on seniority alone, to preference in an entirely different line of work. Expressed in another way, the organization contends that a Division Clerk (Zarker) should have been placed on the Overcharge Claim position, but that, in filling the resulting vacancy as a Division Clerk, only Division Clerks could be considered; and this notwithstanding the fact that there were in the seniority district ten other employes having more seniority and on lower rated positions than the oldest of the five Division Clerks to whom the General Chairman attempts to restrict the right of advancement in the Division's Department. The contrast between his position with respect to Mr. Zarker's rights and his position with respect to the filling of the resulting vacancy is apparent, and is only mentioned to emphasize the inconsistency of the organization's position in Mr. Zarker's case that seniority must be respected regardless of fitness and ability.

**OPINION OF BOARD:** The claimant, Zarker, bid for the position of Investigator, Overcharge Claim Department, Office of Auditor of Freight Accounts, Topeka, Kansas. He was the senior applicant, but his bid was rejected and the position was assigned to Charles H. Dale who held about two months less seniority.

The claim is that the Carrier violated Section 3 of Article III of the current Agreement in failing to assign the claimant to the position. Said Rule provides as follows:

"Section 3. Employes covered by these rules shall be in line for promotion. Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability of applicants being sufficient, seniority shall prevail.

**NOTE:** The word 'sufficient' is intended to more clearly establish the prior rights of the senior of two or more qualified employes having adequate fitness and ability for the position or vacancy sought in the exercise of seniority."

The Organization contends that the long period of service, approximately 40 years, of the claimant in the Office of the Auditor of Freight Accounts, first as a clerk in the Agents Account Department, then to the Recheck for a year, next in the Interline Department as a Desk Helper, then as Interline Division Clerk, later seventeen years as Travelling Auditor of Demurrage and since 1935 again as Division Clerk in the Interline Department establishes claimant's fitness and ability. The Organization contends that in these various positions the claimant "became familiar with practically every phase of station accounting and station records, with operating department rules covering handling of cars, prevailing operation practices and with local practices of shippers" and that "a claim or the handling of claims is not something that is foreign to an experienced Interline Division man."

The Organization admits that the Claimant has had no experience in the Overcharge Claim Department but insists that Section 6 of Article III which provides that "Employes awarded positions under the rules of this Agreement will be allowed thirty (30) working days in which to qualify thereon, \* \* \*" shows that the parties did not contemplate that experience on a particular position was necessary to "ability and fitness" for that position.

The Carrier, however, points out that the position here in question was the head position of five positions with the same title; that the occupant of this position must have a thorough knowledge of overcharge claim rules and procedure and practical experience in their application; that overcharge rules are separate from and on a parity with AAR accounting rules governing freight, passenger and disbursements accounting; and that freight overcharge claim work is so different from the bulk of freight accounting work

that many railroads handle it in other than freight accounting offices. The Carrier also states that the occupant of the position here in question must be able to instruct and advise the other four Investigators in the handling of overcharge, reparation and other claims; that he must be capable of investigating and properly disposing of all claims filed (and transit claims recharged) by other roads, and of the direct handling to conclusion of the more difficult claims filed with the Santa Fe; that he must have sufficient experience to be able to decide whether all available necessary facts have been obtained and whether such facts warrant the payment or declination of the claim; that he must understand the Transportation Act and must be familiar with the rulings and opinions of the Interstate Commerce Commission interpreting said Act in order to be able to decide the many questions involved in claim work; and that he must have sufficient training and experience to locate responsibility and fix penalties for errors in handling shipments.

The Carrier insists that a recital of the duties and requirements of this particular position demonstrates that its work is so different from the general accounting work the claimant has been doing that his experience and training did not give him sufficient "fitness and ability" for this position.

The Carrier states that the position was assigned to Dale who had had 28 years experience in the Overcharge Claim Department, only after the claimant's application and his fitness and ability had been carefully considered by "The Auditor, Auditor of Freight Accounts, Assistant Auditor of Freight Accounts, two Chief Clerks, and other supervisors well acquainted with Mr. Zarker's experience and capabilities."

While the Rule here involved limits the choice of the Carrier to the senior applicant who has sufficient "fitness and ability" and prevents the appointment of a "best qualified" junior applicant when there is a senior applicant with sufficient fitness and ability to fill the position, Award 2534, the question of the fitness and ability of the senior applicant must, in the first instance, be determined by the Carrier. The decision of the Carrier in such a case is disturbed by this Board only where it is shown that the action of the Carrier was arbitrary, capricious or unreasonable.

There has been no proof here of the action of the Carrier being arbitrary or unreasonable.

The Carrier has promoted the claimant many times which would indicate that the Carrier was not prejudiced against the claimant.

The Carrier has shown that the position in question required special knowledge, ability, tact, and judgment which could only be acquired through a long period of training and experience. Without such knowledge, ability, tact and judgment a man would not have sufficient ability and fitness for the position. It was not a position on which a thirty-day qualifying period could give an applicant the necessary training and experience.

Under similar factual situations this Division has many times held that the decision of the Carrier should not be set aside. Awards 3617, 3537 (same rule), 2573, 2142, 2031 and 1147.

**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 Employee involved in this dispute are respectively carrier and employee 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 no violation of the Agreement is disclosed by the record.

**AWARD**

The claim is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: H. A. Johnson**  
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1948.