

Award No. 4371
Docket No. CL-4350

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier did not properly apply certain applicable rules of agreement governing working conditions of employees effective April 1, 1945:

(1) When they refused to assign Herbert B. Shackley, senior applicant to position of Senior I.B.M. Operator 112, Auditor of Equipment Service Accounts Office, Omaha, Nebraska.

(2) That claimant, H. B. Shackley's application for the position of Senior I.B.M. Operator be accepted and he, being the senior applicant, be assigned to the position in conformity with rules of said agreement.

(3) That claimant H. B. Shackley be paid the difference between what he has subsequently earned and what he would have earned had Carrier assigned him to the position of Senior I.B.M. Operator, retroactive to date a junior employee was assigned, viz., January 22, 1947.

EMPLOYEES' STATEMENT OF FACT: On January 16, 1947, Management bulletined vacancy of Senior I.B.M. Operator, 112, rate of \$226.50 per month, in office of Auditor of Equipment Service Accounts, Room 105 Union Pacific Building, Omaha, Nebraska (Employees' Exhibit No. 1).

January 17, 1947, claimant H. B. Shackley, seniority date October 19, 1925, applied for the vacancy (Employees' Exhibit No. 2).

January 22, 1947, Management appointed John Ringel, Seniority date January 3, 1941, a junior employee, to the position of Senior I.B.M. Operator, 112 (Employees' Exhibit No. 1).

January 22, 1947, formal protest was filed by claimant, H. B. Shackley, account his non-assignment to the vacancy in accordance with rules of the aforesaid rules agreement citing to support his claim, rules No. 8, 11 and 20 thereof which are hereinafter quoted for ready reference (Employees' Exhibit No. 3, A and B).

January 22, 1947, Mr. Shackley's complaint and/or claim was presented in his behalf by the Local Chairman to the employing officer, Mr. L. R. Hilker, Auditor of Equipment Service Accounts (Employees' Exhibit No. 3 B).

CONCLUSION

The Carrier has shown by the foregoing that:

(1) On November 18, 1944, and again on July 2, 1946, notices were posted on bulletin boards in the Equipment Service Accounts Department offering training to employees interested in fitting themselves for electric accounting machine operation on company time, which means during working hours at the employee's regular rate of pay and at carrier's expense. Claimant did not elect to participate in the training program which followed each of these notices.

(2) On January 16, 1947, Position No. 112, Senior I.B.M. Operator, became vacant and was bulletined and Claimant Shackley submitted an application therefor. Claimant was given an opportunity to take tests in operation of electric accounting machines to demonstrate his fitness and ability for promotion to the position sought. He declined to submit to the tests. He stated that he knew nothing about the operation of the machines, and this is admitted by the General Chairman of the Organization (Carrier's Exhibit I).

(3) Organization's Local Protective Committeeman was thereupon informed that Claimant would not be assigned to Position No. 112, Senior I.B.M. Operator.

The record in this case clearly indicates that Claimant definitely lacked sufficient fitness and ability to qualify him for the position sought, which are required before an employee is entitled to promotion under Rule 8 of the agreement, and fully supports the action of the Carrier in not assigning Claimant Herbert B. Shackley to Position No. 112, Senior I.B.M. Operator (Carrier's Exhibit D).

The Carrier respectfully requests that this Honorable Board deny in its entirety the claim presented by the Employees' Organization in behalf of the Claimant in this case.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 16, 1947, Position No. 112, Senior I.B.M. Operator was bulletined for bid; Claimant filed an application for the position but was denied it upon the Carrier's finding that he lacked sufficient fitness and ability for the position. Prior to the installation of electric accounting machines in the Equipment Service Accounts Department the Carrier offered a program of training in the operation of electric I.B.M. machines to all employees in the department; this was done by a notice posted on November 18, 1944. The training was taken by 24 employees, who were paid their regular rates of pay while taking the course; Claimant, by his own election, did not participate in the training course. Again on July 2, 1946, another notice was posted offering training to employees interested in fitting themselves for operation of these machines, and again the training was offered on company time; Claimant, by his own election, did not participate in the training course.

The Carrier asked Claimant to take a test in the operation of the machines; the offer was denied, Claimant stating that he had no knowledge of the machines. Refusal to take an examination has been held by this Board to be grounds for denying a claim; see Awards 2458, 1888 and 82. The record indicates that Claimant did lack the required qualifications for the position which he sought, and Claimant has failed to show that the Carrier's determination of his fitness and ability was unreasonably made. See Awards 4040, 3887, 3273, 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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.