

Award No. 4485
Docket No. CL-4394

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood in favor of Peter Caulfield, La Salle Street Station, Chicago, Illinois, that he be placed on Assistant Elevator Starter Position, rate \$238.32 per month.

Peter Caulfield to be paid the difference between Elevator Operator \$233.32 per month, and Assistant Elevator Starter, \$238.32, effective April 30, 1948.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing an effective date of August 2, 1945, as to rules and working conditions, is in effect between parties to this dispute.

Peter Caulfield has been employed as Elevator Operator continuously since September 15, 1923, at the La Salle Street Station, Chicago, his present rate \$233.32 per month.

Bulletin No. 28, dated April 24, 1948, advertised vacancy No. 1 for Elevator Starter, \$255.81 per month; also Job No. 2, Assistant Elevator Starter, rate \$238.32.

Assignment to Bulletin No. 28, dated April 30, 1948, reads as follows:

"Chicago, Ill.
April 30, 1948

All Concerned:

My bulletin No. 28, dated April 24, 1948:

JOB No. 1

Elevator Starter, rate \$255.81, hours 7:45 A. M. to 4:45 P. M., 6 days, Sundays and Holidays off, as bulletined is assigned to Antonio Bruno.

JOB No. 2

Assistant Elevator Starter, rate \$238.22, hours 8 A. M. to 5 P. M., 6 days, Sundays & Holidays off, as bulletined is assigned to Domenico Rinaldi.

(signed) Walter Eck
Custodian

(signed) R. S. Miller
Bldg. Superintendent."

if the railroads are to be operated with efficiency and safety, this decision must be made by the management.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Peter Caulfield, with seniority date of September 15, 1923 was employed as an Elevator Operator at the La Salle Street Station in Chicago at rate of \$233.32 per month. Under date of April 24, 1948 Carrier issued Bulletin No. 28 advertising vacancies for, 1. Elevator Starter \$255.81 per month, 2. Assistant Elevator Starter \$238.32. Claimant bid on Job No. 2 but was not assigned, the assignment being given to a junior employee, one Domenick Rinaldi, seniority date September 30, 1929. The effective date of the assignment was April 30, 1948. Claim is made by the Employees for Carrier's refusal to assign Mr. Caulfield to the position and for the difference in pay between the Assistant Starter's position and the Elevator Operator's position on the ground that the seniority rule and promotion rule cited in the Position of Employees were violated.

In letter dated May 3, 1948 to Claimant explaining the reason for his not having been assigned to the position, the Building Superintendent advised Mr. Caulfield as follows:

"Wish to state that according to your past record and repeated tardiness and failure to report for work with this record, it does not indicate your ability to handle the job of overseer operator nor the people using these elevators. This is based upon records of both past and present performance."

The principles guiding this Board in the determination of claims such as this have been stated in various ways in many Awards of this Board. Generally speaking, the rule that has been uniformly applied, even though stated differently in the numerous awards on this question, is that the Carrier has the right to determine in the first instance the fitness and ability of applicants for promotion and when there is evidence, which if believed, is sufficient to sustain the Carrier's judgment that the senior employee lacks sufficient fitness and ability for the position sought, the judgment of the Carrier will not be disturbed.

In this instance, it is shown that the Claimant in 1943 was tried on a Rule "G" violation, found guilty and reinstated about a month after the occurrence, and Carrier indicates that Claimant's record is replete with instances of tardiness, failure to report for work, and failure to report reasons for absences and failure to notify the proper supervisory officer of the Carrier in advance that he would be obliged to be absent. Now, we don't believe that the Rule "G" violation standing alone should be considered sufficient to bar this employee from advancement for if it could that would result in the assessment of further discipline for a dereliction which the employee had already expiated. Here, however, there is evidence of other conduct (not effectively refuted by Employees) which formed the basis of the Carrier's judgment. While we recognize that the position of Assistant Starter of Elevators does not call for a great deal of supervision, at the same time it does require a standard of reliability and punctuality, plus a certain amount of intelligence, tact and affability not necessarily required of an operator. From the record it seems clear that Carrier assessed the Claimant on his record and found him wanting in those qualities. We cannot say that its judgment in that respect was unreasonable. Nor, do we find evidence of partiality or bias. Accordingly, we hold that a denial award is required.

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 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 26th day of July, 1949.