

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

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

(1) The Carrier violated the rules of the Clerks' Agreement when on February 15, 1948, the Carrier appointed and assigned Norman S. Haviland to position of Chief Clerk, a Negotiated List No. 1 position.

(2) The Carrier now be required to fill the position of Chief Clerk, in accordance with the rules of the Agreement, and compensate employees adversely affected by reason of such violation retroactive to February 15, 1948.

EMPLOYEES' STATEMENT OF FACTS: On Saturday, February 14, 1948, Mr. Charles S. App, Chief Clerk, the incumbent of a Negotiated List No. 1 position, was retired on pension, the employees of the office having no knowledge that position was to be vacated until two days prior to his retirement. Effective Sunday, February 15, 1948, Norman S. Haviland was appointed to fill the vacancy, having been transferred from a position in the President's Office, and from the seniority district of the President's Office, a separate seniority district. Mr. Haviland had no seniority rights on the Philadelphia Division, had entered the service in the Passenger Department on December 16, 1939, and was transferred to the President's Office from the Passenger Department on April 9, 1942.

POSITION OF EMPLOYEES: Prior to the existing Agreement effective July 1, 1944, there was in effect an agreement of April 1, 1937, and under the Scope Rule of that Agreement there was a group of employees known as "Personal Office Force List No. 1" and we quote the pertinent provisions covering that group of employees, as contained in the Scope Rule or Rule No. 1 of that Agreement:

"These Rules, except as otherwise specified, shall not apply to the personal office force positions, as indicated on 'Personal Office Force List No. 1.'

New positions or reclassification of existing positions shall be subject to conference between the Management and the General Chairman for the purpose of determining whether such positions shall be excepted. Failing to agree, appeal may be taken as provided for in this Agreement. Determination of such cases shall be based on the duties, requirements and nature of the position.

it is not a requirement of the rules that the senior employe must be appointed or assigned to fill such positions.

It must be obvious that the qualifications for the Negotiated List No. 1 positions are different than the qualifications for the ordinary positions covered by the agreement and the determination of whether an employe is qualified is the responsibility of the Carrier. Rule 2 (a) clearly allows and permits the Carrier in its managerial judgment to fill Negotiated List No. 1 positions with the person who it determines is best qualified and your Honorable Board has stated in many awards that the judgment of the Carrier in such matters will not be interfered with so long as it has acted in good faith and without bias or prejudice. In the instant case, the Carrier submits that its judgment in concluding that Mr. Haviland was best qualified to fill the position involved was reasonably and fairly exercised.

In view of the facts and circumstances set forth hereinbefore, the Carrier holds that Norman S. Haviland was best qualified in the judgment of the Management to fill the position of Chief Clerk in the Superintendent's office and maintains in appointing Mr. Haviland to the position that it did not act in bad faith, arbitrarily or without giving the matter full and careful consideration. Further, in making the appointment, Rule 2 (a) was fully complied with and not violated as contended, neither was there any violation of Rule 24, and to sustain this claim would deprive the Carrier of the right accorded under the rules in effect to exercise its managerial judgment in determining and selecting the employes best qualified to fill such positions. The Carrier, therefore, requests that the claim be denied in its entirety.

OPINION OF BOARD: The Organization contends that the Carrier violated the Agreement when it appointed Norman S. Haviland to the position of Chief Clerk in the office of Superintendent at Reading Terminal, Philadelphia, Pennsylvania. It contends that the occupant of the position of Assistant Chief Clerk should have been assigned to the position. The position of Chief Clerk is a Negotiated List No. 1 position under Rule 2 (a) of the current Agreement and is therefore subject to the following paragraph contained therein:

"When vacancy occurs on any such position the Management, by appointment, shall fill the vacancy with the person who in its judgment, is best qualified to fill the position. In so doing full consideration will be given the seniority standing of available employes on the division or in the department where the vacancy occurs."

Under the rule, the Carrier is authorized to assign the employe whom it considers the best qualified to perform the work of the position, subject only to the requirement that it will give full consideration to the seniority standing of available employes on the division or department where the vacancy exists. Carrier is not required to assign the senior employe of any group or class. The Assistant Chief Clerk had many years' seniority in the same office where the vacancy occurred. Haviland had no seniority in the seniority district where the vacancy existed.

The Carrier shows that the position of Chief Clerk here involved, is an important position from the viewpoint of management. The Chief Clerk supervises a large number of employes and supervises the assignment and proper performance of the work of the office. The occupant should have initiative, leadership, executive ability and capacity to assume responsibility. He is responsible for the handling of large volumes of correspondence, reports and inquiries. He is charged with investigations of complaints and unusual occurrences. He comes in contact with the public and his ability to deal with those using the services of the Carrier is an important factor in filling the position. The Carrier contends that it considered the qualifications and seniority of all employes as required by Rule 2 (a). In so doing, it reached the conclusion that Haviland had

the executive ability, fitness and temperament to best qualify him for the position.

It is most difficult to determine the best man for a position where so many qualities are required, many of which are of an intangible nature. Which of two or more employees is best qualified is often a matter of opinion and not susceptible to exact proof. Someone must make the choice and the Agreement designates the Carrier as the party to do so. If the Carrier acts reasonably on the evidentiary factors which ordinarily control the choice, and the record does not affirmatively establish that the Carrier acted arbitrarily or capriciously, its action is in accordance with Rule 2 (a) and it will not be disturbed by this Board. The evidence upon which the Carrier acted in the present case is sufficient to sustain its action in appointing Havland to the position.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTSET: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.