

Award No. 5007
Docket No. CL-5028

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

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

1. The Carrier violated the Clerk's Agreement when on September 26, 1949 it refused to permit Mrs. C. G. Erwin to displace stenographer, Miss B. L. Streete, a junior employe, in the Accounting Department located at Erwin, Tennessee.

2. The Carrier shall now assign Mrs. Erwin to said position, and reimburse Mrs. Erwin and all other employes for all wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Mrs. C. G. Erwin was employed in the Accounting Department January 17, 1949 as a stenographer with a rate of pay of \$237.32 per month. She was promoted February 7, 1949 to a stenographic position with a rate of pay of \$242.32 per month and Miss B. L. Streete was then employed to fill the position of stenographer vacated by Mrs. Erwin. Effective September 1, 1949 Mrs. Erwin was displaced by a senior employe (returned from extended sick leave) and at the request of the management in the Accounting Department, Mrs. Erwin was persuaded to exercise her seniority to a position of Messenger in the Traffic Department, thereby sustaining a substantial loss in wages.

Shortly after September 1, a position on the Payroll and Voucher Desk in the Accounting Department, rate \$233.17 per month, was bulletined as vacancy and was bid in and assigned to Mrs. Erwin effective September 12, 1949. Less than ten days later Mrs. Erwin was advised that she would be displaced by a senior employe effective September 26 and on September 21 she addressed a communication to Mr. Charles Hewett, General Auditor, requesting that she be permitted to displace Miss Streete, her request being as follows:

September 21, 1949

Mr. Chas. Hewett,
Building

Dear Sir:

Due to my displacement by a senior employe, I wish to exercise my seniority and bid in the position now held by Miss Bessie L.

improved the quality of her stenographic work in the meantime, or is any better qualified than she was on the previous occasion when the management advised her that she was not qualified to bid in the very job that she is now attempting to bid in.

Carrier insists that there has been no violation of the agreement with its employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are that Mrs. Erwin was refused by the Carrier to displace Miss B. L. Streete, a junior employe in the Accounting Department located at Erwin, Tennessee.

The Employees state that Mrs. Erwin was hired by the Carrier as a stenographer on January 17, 1949, after having seven months' experience in a law office, at a rate of \$237.32 per month. On February 7, 1949, she was promoted to a different stenographic position, with a rate of \$242.42 per month. On September 1, 1949, the regular occupant of the position that Mrs. Erwin occupied, returned and displaced Mrs. Erwin. The Employees state that, at the request of the Carrier, Mrs. Erwin then took a position as messenger in the Traffic Department. On September 12, 1949, she was assigned a position on the Payroll and Voucher Desk, Accounting Department, rate \$233.17 per month, and on September 26, 1949, was displaced from this position by a senior employe, effective September 26, 1949. Mrs. Erwin then, knowing she was to be displaced, sought to exercise her seniority rights and displace Miss B. L. Streete, who had succeeded her on her first position of stenographer in February 1949.

The Carrier admits most of the facts contained in the Employees' submission, but states that on February 7, 1949, when Mrs. Erwin bid in her second stenographic position with the Carrier, she was warned that her service had not been satisfactory, due to inexperience, and that her promotion was not based on satisfactory service but merely because she was senior to Miss Streete by one month. There were discussions with her concerning her inability to carry her share of the work, her inability to spell correctly, her lack of knowledge of punctuation, and her failure to profit by her past mistakes. The Carrier further states that they did not persuade Mrs. Erwin to take a clerical job in the Traffic Department, but that Mrs. Erwin wished to displace Miss Streete on September 1, and she was told again about the complaints the Carrier had in connection with her stenographic work and that they would not be justified in permitting her to replace Miss Streete; that Mrs. Erwin withdrew her letter and offered no complaint on the question of her qualifications and stated that she would exercise her seniority rights in the Traffic Department. Mrs. Erwin again, on or about September 26, 1949, attempted to displace Miss Streete and the Carrier stated that she did not have the fitness and ability required under Article 3 (g).

The Employees state that due to the fact that the Carrier hired the claimant in January 1949 at a rate not given inexperienced employes, and that she was allowed a promotion, these facts would prove that the claimant did possess sufficient fitness and ability to again take over the position on September 26, 1949, that she was given in January 1949 by the Carrier. This is evidence of her fitness and ability, but it is not controlling evidence in view of the evidence submitted by the Carrier to show that she had been warned on occasion concerning her ability to carry her share of the work, her poor spelling and punctuation.

What was said in Award No. 5006 concerning Sections of the pertinent Article of the effective Agreement and their application to that claim will not be repeated here as the parties are the same and the Sections relied upon by the Employees are, in the main, the same Sections and they have the same bearing on this claim. This claimant has not shown the Board that she has fitness and ability to hold the position in question or that the Carrier was

unfair or lacked good faith, or its decision on fitness and ability had been fraudulent. Award 2031.

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

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 4th day of August, 1950.