

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on September 27, 1949, it failed and refused to return furloughed clerk C. W. Willmann, seniority date June 1, 1914, to service in the order of his seniority rights for temporary or permanent employment as provided in Rule 14 (e) of the current Clerks' Agreement, and utilized instead a clerk junior to Mr. Willmann, namely Walter W. Evans, seniority date June 26, 1914;

2. Clerk Willmann shall be paid for the wage loss suffered, amount \$15.60, because of the Carrier's action in violation of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: Clerk C. W. Willmann was the regularly assigned occupant of a clerical position in the Auditor Freight Receipts Office, among 36 other such positions classified as "Recheck Clerk", designated as Position No. 16-858, rated \$14.18 per day. The assigned hours of service were 8:10 A. M. to 12:10 P. M.; 12:55 P. M. to 4:55 P. M., five days per week, Monday through Friday, with assigned duties consisting of:

Rechecking interline account settlements and issuing statements of differences or correction accounts adjusting errors found in settlement of such accounts. Also, conduct correspondence and perform such other similar or lower rated duties as may be assigned, including trips to outside record rooms.

QUALIFICATIONS REQUIRED:

- (a) Recheck clerk experience in this office, or
- (b) Two (2) years or more experience in this office as
**SENIOR INTERLINE ACCOUNT CLERK or SENIOR REVIS-
ING CLERK.** (our emphasis)

which assigned duties and required qualifications are stipulated on bulletins advertising vacancies on positions of Recheck Clerk for bids.

On September 6, 1949, the Carrier issued a notice to Clerk Mr. C. W. Willmann, which notice we here quote, abolishing his position at the close of business September 9, 1949:

Mr. Willmann had no legitimate claim to this work either by right of seniority or qualification, both of which are requirements of Rule 14 (e). We think a denial is in order.

(Exhibits not reproduced.)

OPINION OF BOARD: When the Carrier's train service employees went on strike, September 9, 1949, the positions of a number of the employees in the office of Auditor of Freight Receipts were abolished, including the position of the claimant, an employee with a regular assignment as recheck clerk. All of such employees qualified as furloughed. Subsequently, September 27, 1949, the Carrier undertook to compile a statement of interline balances in the office of the Auditor of Freight Receipts. Four senior clerks and W. W. Evans, who had been Assistant Supervisor of the Interline Department of the Auditor of Freight Receipts' office, were called to perform this work. Mr. Evans holds seniority rights junior to C. W. Willmann, the claimant.

It is contended by the Petitioner that the Carrier violated Rule 14 (e) of the Agreement when it utilized the services of Mr. Evans and did not call the claimant, Willmann, for the work, and Petitioner now requests that the Carrier pay claimant a day's pay for the wage loss suffered.

It is contended by the Carrier that they required the services of an employee currently experienced in the Interline Department for the purpose of assisting in the supervision of the work. W. W. Evans was the Assistant Supervisor for this Department.

There is no dispute that the employees selected for the work and claimant were eligible under Rule 14 (e). This issue arises over the application of Rule 4 (a) which is as follows:

"Rule 4. (a) * * * Promotion, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability 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 employees having adequate fitness and ability for the position or vacancy sought in the exercise of seniority."

This rule places the initial burden on the Carrier, when it has an assignment to make, to determine the fitness and ability of eligible employees; but it may not act capriciously or arbitrarily. If the fitness and ability of more than one employee is sufficient, the services of the senior must be utilized. In determining fitness and ability, such qualities must be related to the requirements of the work to be performed.

When the Carrier undertook to prepare a statement of interline balances, it called four senior clerks who were experienced in the general procedure of the office of Auditor Freight Receipts but not familiar, in particular, with the work of the Interline Division. The Supervisor of the Division was on duty, his position not having been abolished, but the Carrier determined that it required additional assistance for the purpose of supervising and instructing the senior clerks who were assigned the work. It is not disputed that Mr. Evans, who was the Assistant in Charge of this Division, was currently familiar with the routine of the Interline Division. On the other hand, Claimant Willmann had had eleven years' experience in this Division, but had not worked there since 1925 when he left the position of Head of Interline Division Group and was assigned position of Recheck Clerk. If the purpose of the Carrier was to assign employees only for the purpose of preparing the statement of interline balances, it would be reasonable to say that Clerk Willmann's fitness and ability were sufficient and that, therefore, his seniority should prevail. But the Carrier asserts that its purpose was to appoint a clerk who was qualified to give instruction and additional supervision of the work. The Carrier had the right in the exercise of its managerial prerogatives to establish the qualifications for the work, if done in good faith. We have searched

the submissions carefully to determine if, in fact the employment of Clerk Evans was for the purpose of instruction and additional supervision. There is nothing to show that he did not so perform. We have, therefore, concluded that there was no lack of good faith on the part of the Carrier. Consequently, as the Carrier had established as qualifications for the position knowledge and skill in present day procedure in the Interline Office in order to provide instruction and supervision of the special job, we must find that it did not act capriciously when it determined that, because he had not been employed in the Interline Division for nearly twenty-four years, the fitness and ability of Clerk Willmann was not sufficient for such purposes. For these reasons, the claim is not valid.

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

The facts and the current Agreement do not support the claim.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1951.