

Award No. 5264
Docket No. CL-5280

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**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerk's Agreement on April 4th, 1949, when the Carrier:

1. Filled a vacancy on position of Switchboard Operator-Clerk in the office of General Freight Agent, Buffalo, N.Y. by employment of a person not covered by Clerks' Agreement.
2. Failed and refused to give preferential consideration to qualified employes holding rights under this Agreement.
3. Failed and refused to properly advise qualified employes covered by the Agreement, of the existence of a vacancy.
4. Failed and refused to state the qualifications required for an employe desiring to be assigned to the position.
5. Carrier shall now appoint to position of Switchboard Operator-Clerk in the Office of General Freight Agent, Buffalo, N.Y., a senior qualified employe coming within the scope of the Clerks' Agreement, preferred consideration to be given to employes Edward Walsh, R. W. Swartz, Catherine Higgins and any others.
6. That such employe so assigned shall be reimbursed for all wage loss sustained, retroactive to April 4th, 1949. (File 872)

EMPLOYEES' STATEMENT OF FACTS: Prior to April 4th, 1949, a vacancy existed in the office of General Freight Agent, Buffalo, N.Y. on position of Switchboard-Operator Clerk which was not filled from employes in that seniority district.

At least three employes having seniority on Operating Department Rosters at Buffalo, N.Y. desired to be assigned to this position. Carrier held that employes mentioned were not qualified for the position, and on April 4th, 1949, filled the position by hiring Mr. William Woodhouse a new employe who held no rights under the Clerks' Agreement.

Sometime prior to the vacancy in the General Freight Agents Office, Division Chairman Yacobucci had conference with Mr. Conway, Assistant

result of prejudice, favoritism or bad faith, we cannot say that the contract has been violated.

It may be as we have indicated that the contract did not contemplate a situation arising such as we have here and for that reason provisions governing such a situation were not included. But we cannot supply that which the parties have not put in the agreement. We can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to the employees by the agreement."

The employees in their "Statement of Claim" do not show any specific rule as having been violated simply because there were no rules violated. The charges contained in their claim are, in effect, demands for new rules and the right to dictate promotion policy of Traffic Department.

1. The Carrier officer filled the vacancy with a person not covered by Clerks' Agreement. The appointment was given to Mr. William Woodhouse because he had the fitness and qualified. The other applicants did not.

2. The Carrier denies it refused to give preferential consideration to employees holding rights under the Agreement as it did consider them and none of the three qualified.

3. The Carrier is under no obligation to advise employees covered by the Agreement of the existence of a vacancy of an X-3 position.

4. The Carrier is under no obligation to advertise or bulletin the requirements of an X-3 position.

5. The Carrier gave proper consideration to the claimants and found them not suitable.

6. The Carrier having complied with all of the terms of the Clerks' Agreement contends that, as the claimants did not qualify for the appointment, there could be no wage loss.

The Claim is without merit and should be denied for the following reasons:

1. Carrier has not violated any rule of the existing Agreement.
2. Claimants were found not qualified.
3. Third Division Awards 2491, 3151, 3188, 3273, 4371, 4530 and 4537.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 4, 1949, Carrier filled a position in the office of General Freight Agent, Buffalo, N.Y., by appointing an employee not covered by the Clerks' Agreement. The position was excepted from many provisions of the Clerks' Agreement including the Bulletining and Promotion Rule. The Agreement sets up varying exceptions to rules of the Agreement with respect to different positions. This particular position was known from the standpoint of rules from which excepted as an X-3 position. Rule 1(Scope) contains a tabulation of the rules applicable to the differing classes of excepted positions. Following the tabulation of rules applicable to X-3 positions the following NOTE appears:

"When vacancy occurs on any X-3 positions, the proper officer shall fill the vacancy by appointment, giving preference to qualified employees covered by this Agreement."

The question to be determined in this docket is whether or not Carrier has complied with the requirements of this note in filling this position.

To what extent has Carrier limited itself in the selecting of employees to fill X-3 positions under the language of this note? It is apparent from the

action of the parties in excepting these positions from the bulletining and promotion rules that they intended that Carrier would be considerably less restricted in making appointments to this type of position than to those fully covered by the Agreement. It is for this reason that we cannot uphold the employees' contention to the effect that, in giving consideration to applicants to a vacant X-3 position, the same standards should apply as those set forth in the Promotion Rule.

Unfortunately the Rule as written provides no standards with respect to the manner in which the preference reserved to employees covered by the Agreement should be effectuated. In this instance, it appears that the officer making the appointment inquired of the Chief Clerk of the Division Superintendent whether he knew of any qualified employee who would be interested in the position. Apparently, the three employees named as Claimants herein were the only known aspirants to the position. Carrier had given consideration to these applicants and found them wanting and hence hired one Woodhouse from another railroad to fill the position. The ground upon which Carrier rejected the applicants was that they were not considered as of a calibre suitable to advancement to positions of executive administrative or sub-official character, Carrier asserting in effect that the lower rated positions in the Traffic Department are generally used as a training ground for advancement to such positions. Such a reason, of course, would be entirely unacceptable as a basis for refusing promotion to a senior employee to a bulletined position under the ordinary promotion rule. But, as pointed out above, Carrier is less restricted in making appointments of this type and the reason above stated may well have been one of the fundamental purposes for negotiating the exception on these particular positions.

While from the standpoint of good labor relations, Carrier's officer might have expended more effort in seeking an employee under the Agreement to fill the involved position, we cannot say that Carrier so ignored the requirements of the NOTE above quoted as to set aside its action herein. Accordingly, the claim must be denied.

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 19th day of March, 1951.