

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement, effective September 1, 1944, amended September 1, 1949, and memorandum agreement of November 22, 1946, when on August 22, 1950, it appointed W. B. Grimes, who holds no seniority in Seniority District No. 5, to the position of Chief Clerk to the Superintendent of Motive Power at Savannah, Georgia, and

1. That Special Accountant T. J. Ricks, who is the senior qualified employe in the same Seniority District in which the vacancy occurred (Seniority District No. 5), shall be assigned to the position of Chief Clerk to Superintendent of Motive Power at Savannah, Georgia, in preference to W. B. Grimes, and

2. That Special Accountant T. J. Ricks shall be reimbursed for all wage loss, i.e., the difference between the rate of \$324.57 per month, the rate he receives on his present position, and the rate of \$419.57 per month that he should have received on the Chief Clerk's position, making a difference of \$95.00 per month, on August 22, 1950, and subsequent thereto until he is properly assigned to the position of Chief Clerk and the conditions complained of are corrected.

EMPLOYEES' STATEMENT OF FACTS: The Office of Superintendent of Motive Power at Savannah, Georgia, is within the operating Department Seniority District No. 5. This Seniority District is System wide and covers some forty-two positions covered by the scope of the Clerks' Agreement. The position being located in offices of Superintendent of Motive Power and Master Mechanics and subdivisions thereof at Savannah, Macon, Albany, Columbus, Industry (Atlanta) and Cedartown, Georgia. The Superintendent of Motive Power's office is in Savannah, Georgia, and being the principle office in this Department, all the other offices and subdivisions report to and receive final instructions from this office.

At the time of this claim there were seven (7) clerks in this office covered by the Clerks' Agreement as follows:

1. Chief Clerk
2. Special Accountant
3. Stenographer-Clerks
4. A.A.R. Clerks

Petitioner recognized this or it would not have agreed to set these jobs out in the agreement and make special provisions therefore in the first place;

Second; the Memorandum Agreement of November 22, 1946 outlining how these jobs may and can be filled would have never been signed by the Petitioner;

Third; the Local Chairman and Vice General Chairman of the Brotherhood of Railway and Steamship Clerks, the Petitioner, would have never applied for the Chief Clerk's job in a seniority district different from their own.

Accordingly, Carrier requests that the Third Division deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood for and on behalf of one Ricks, hereinafter called Petitioner. The claim is brought under that certain Memorandum Agreement dated November 22, 1946. The gist of the claim is that Carrier acted unreasonably, arbitrarily, and in a capricious manner, further that Carrier's act was contrary to the terms and provisions of the above mentioned Memorandum.

We think the said Memorandum means no more than other things being equal, selection must be made of an applicant from the item 1 group. This view is supported by item 5 which imposes a duty on Carrier, that is, consideration, and item 1. The "consideration" referred to in item 5 and which is exercised by the employing officer referred to in item 1 means the result or decision must rest upon a fair, impartial and reasonable basis. If such be the case, the same may not be attacked, that is to say, we will not go behind it. While item 5 restricts the posting of notices, it is silent with reference to who may respond to a notice. This view is, we think, supported by the Brotherhood as set out in its Exhibit No. 7.

The record reflects consideration was given to Petitioner's application and that the same was rejected in favor of another applicant. We note item 1 does not state if the applicant in such group possesses sufficient fitness and ability he will be appointed. The point to be decided is, therefore, did Carrier act in a whimsical, capricious, or unreasonable manner in choosing the applicant it did? The record is replete with evidence pro and con concerning both Petitioner and the successful applicant. We must bear in mind Carrier, as well as the Brotherhood, will suffer if the employing officer made an error in judgment. Also bearing in mind that Carrier's judgment is limited by the Schedule, why or upon what basis may we think Carrier acted properly? We do not think it unreasonable or whimsical to select as superior one who has youth, education and potential possibilities on his side. This case simply amounts to a matter of balancing years of devotion to duty against youth. This Carrier evidently prefers youth with its possibilities and we are unwilling to say it constitutes a breach of the Schedule in so doing.

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 evidence of record does not warrant an affirmative finding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of April, 1952.