Award No. 5966
Docket No. CL-5858

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. Carrier violated rules of the Agreement governing the working conditions of the employes by denial of Senior Applicant Mr. A. Bogren for position of Assistant Head Clerk and Accountant, Office of Car Accountant, 63rd Street, Chicago, vacated February 16, 1949, and assigning a Junior applicant to the vacancy;

2. Mr. Bogren, senior to Mr. Green, be awarded and assigned to Position No. 16, advertised by Bulletin No. 6, on February 4, 1949, to become effective February 16, 1949; and

3. Mr. Bogren be placed upon Position No. 16 that he applied for and that he be allowed wage loss sustained representing the difference between his earnings on other position or positions and what he would have earned on Position No. 16, approximating 71¼c per day, retroactive to February 16, 1949.

EMPLOYES' STATEMENT OF FACTS: On February 3, 1949, Mr. Bodell, the incumbent of Position No. 16 in the office of Car Accountant, 63rd Street, Chicago, requested in writing to be relieved of the assignment to that position effective with close of business February 15, 1949.

On February 4 and 5, 1949, Position No. 16, title Assistant Head Clerk and Accountant, rate $11.73¼ per day was advertised on Bulletin No. 6 in Office of Car Accountant. On the bulletin was the stipulation "Position will be available February 16, 1949" (See Exhibit A).

Applications were filed by the following:

Miss Agnes Burke, seniority from Oct. 10, 1912, Rank #6.

Mr. A. Bogren, seniority from Sept. 11, 1917, Rank #17.

Mr. A. E. Green, seniority from Mar. 15, 1923, Rank #49.

Mr. W. Drolet, seniority from May 1, 1923, Rank #50.

Position No. 16 was awarded on February 12, 1949, to Mr. A. Green with seniority from March 15, 1923, and ranking #49 on the seniority list.

Carrier's action in assigning position of Assistant Head Clerk and Accountant to Mr. Green was fraudulent, arbitrary, capricious, unreasonable, or lacking in good faith and honesty. Carrier has shown affirmatively that its action in this case was reasonable and in good faith and that the agreement has not been violated. The Board is, therefore, requested to deny this claim.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimant, with a seniority date of September 11, 1917, applied for the position of Assistant Head Clerk and Accountant, Office of Car Accountant, 63rd Street, Chicago. The position was covered by Bulletin No. 6, and advertised on February 4, 1949 to become effective February 16, 1949. The position was awarded to a junior employe on February 12, 1949.

The Organization urges that the Claimant has been deprived of his rights under the Agreement and points to Rule 6 and Rule 9.

> Rule 6. Employes covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this position shall not apply to the excepted positions.
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> Note: The word "sufficient" is intended to more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.
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> Rule 9. Employes awarded bulletined positions and failing to qualify within thirty (30) days, shall retain their seniority rights and may bid on any bulletined position, but may not displace any regularly assigned employe.

The position in question is one of considerable importance and one which requires a certain amount of experience and/or training. By that, we do not intend to say that it is necessary that an applicant must have previously filled the position or performed all the duties of the position at various times. Rule 6 says, in essence, that seniority shall prevail if fitness and ability is sufficient.

It is clearly a managerial function to determine if an employe has sufficient ability and fitness to qualify for a bulletined position. Rule 6 prohibits selection of a junior employe in preference to a senior employe if both are qualified even though the junior employe shows a higher degree of fitness and ability. The test must be based on a sufficiency of fitness and ability.

In this present instance the Claimant appears to have a good record in the positions that he has held in the past and in the one he now holds. He also has given the Carrier many years of faithful service. For these things he is certainly to be commended. However, these things alone do not necessarily qualify him for the position in question.

We are of the opinion that the position of Assistant Head Clerk and Accountant is a position which requires a certain amount of knowledge of the subject of accounting. There are other qualifications which may enter into the requirements of a position such as this one. By observing an employe for a period of years an employer usually can get a general knowledge of the capabilities of the employe. In the present case several applicants for the position were interviewed regarding the position. It was determined that the employe who was awarded the position was the senior employe who qualified under the terms of Rule 6.

The record does not indicate to us that the Carrier acted arbitrarily or that its selection was made on the basis that the successful bidder was selected because of a higher degree of qualification. Rather, the Carrier determined that the Claimant did not measure up to the requirements of fitness and ability. The Carrier is in a far better position to determine such standards than are we of this Board and in the absence of a showing of the Carrier acting arbitrarily we are reluctant to substitute our judgment for that of tne Carrier.

Regarding Rule 9, we are of the opinion that its applicability depends upon a position actually being awarded to an applicant. The purpose of the rule is to permit the Carrier to remove the successful bidder from the position in the event that such employe does not demonstrate sufficient ability or fitness. This rule, by its very wording, does not make it mandatory that the Carrier give a senior employe, who bids for a position, a thirty-day trial period.

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 Employes involved in this dispute are respectively Carrier and Employes 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

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1952.