

Award No. 6026

Docket No. CL-6084

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that—

(1) The Carrier violated and continues to violate rules of the current Working Agreement between the above named parties by failing and refusing to assign Mr. Robert Reany, Delivery Man, Brooklyn Store, to position of Clerk, Stationery Department.

(2) Mr. Robert Reany be assigned to position of Clerk, Stationery Department, and that he be paid the difference between \$13.17 and \$12.13 from and after December 11, 1951, plus such wage increases as might be effective.

EMPLOYEES' STATEMENT OF FACTS: On December 4, 1951, Purchasing Agent H. A. Smith issued Bulletin No. 401 advertising for bid, a clerical position in the Stationery Department (see employees exhibit 1). On December 11, 1951, Bulletin No. 401-A was issued, awarding the position to Alvin E. Huff (employees exhibit 2).

No bids were received from any of the employees holding seniority in Group 1 of the Stores Department, however, four (4) employees holding seniority in Group 2 filed applications for the position under Rule 18 of the Working Agreement. These employees being:

John Hummel	seniority date, September 23, 1920
Robert Reany	seniority date, May 10, 1949
Roy Huff	seniority date, July 7, 1949
Alvin Huff	seniority date, April 17, 1950

In the instant claim, Mr. Reany had filed application for the position in Group 1, under Rule 18, and by referring to Rule 7, he was entitled to the position in line with his seniority. The Awards mentioned in Award #5637 further sustained our claim.

It is hereby affirmed that all data herein contained in support of claimant's position has been submitted in substance to the Management.

CARRIER'S STATEMENT OF FACTS: The employees under the jurisdiction of the Purchasing Agent and the General Storekeeper have system seniority, divided into three separate and distinct groups, Group 1 covering clerks and allied positions, Group 2, other office, store and station positions, and Group 3, laborers in and around stations and warehouses.

On December 4, 1951, a Group 1 position, involving clerical work and typing, was advertised but no bids were received from employees holding seniority in Group 1.

Applications for the position were filed by the following employees holding Group 2 seniority:

John Hummel — Seniority date Sept. 23, 1920
Robert Reany — Seniority date May 10, 1949
Roy Huff — Seniority date July 7, 1949
Alvin E. Huff — Seniority date April 17, 1950

The position was awarded Alvin E. Huff on December 11, 1951.

POSITION OF CARRIER: Rule 18, under which the applications of the Group 2 employees were filed, does not carry any requirement necessitating selection on a seniority basis. It simply provides that employees will be given preference over non-employees. Inasmuch as we assigned the position to one of the Group 2 employees making application, we complied with the rule.

There is no basis for the claim on behalf of Mr. Robert Reany, which should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier bulletined a vacant Group 1 position. No bids were received from employees holding seniority in Group 1. Four employees holding seniority in Group 2 in the same seniority district filed applications for the job and it was filled by one of such applicants with less seniority than the Claimant. It is claimed that such action was a violation of Rule 7, which provides:

"PROMOTIONS, ASSIGNMENTS AND DISPLACEMENTS

"Employees covered by these rules shall be in line for promotion. Promotions, 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 right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

Rule 4(a) provides:

"(a) Seniority begins at the time the employee's pay starts in the seniority district and in the group to which assigned.

"Temporary service does not establish a seniority date in a higher group or on another roster. Such dates are established by assignment to bulletined positions. Employees desiring positions in other groups or on other rosters may file applications for same under Rule 18."

Rule 18 provides:

"FILING APPLICATIONS

"Employees filing applications for positions bulletined in other districts or on other rosters, will, if they possess sufficient fitness and ability, be given preference over non-employees."

It is the position of the Carrier that its action was in accord with Rule 18 and that it had no obligation thereunder to consider the seniority of the applicants. It will be observed that Rule 7 is a general rule establishing the criteria for promotions, assignments and displacements made under other rules. Rule 4(c) establishes certain seniority datum for "employees promoted from one seniority group to another, within the same seniority district," so some movements from one group to another in the same district are clearly recognized as promotions.

We think that where a movement from one group to another in the same seniority district is a promotion, and where more than one employee of the same group has filed an application under Rule 18, that Rule 7 governs the selection of the employee to be promoted. There being no question on this record as to Claimant's fitness and ability, the claim is 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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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