

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(a) Carrier violated rules of the agreement by denial of the application of Mrs. Annette B. Heitz of June 7, 1950 for position of Messenger No. 16, in Superintendent of Shops at Aurora, Illinois, advertised in Notice No. 32 dated June 5, 1950 and assigned to Miss Mary E. O'Banion, non-employee, under Assignment Notice No. 32.

(b) Claimant Heitz be assigned to the vacancy in conformity with her application, she being the senior applicant, and in conformity with the intent and purpose of the rules of the Agreement, and that she be allowed all wage loss sustained, retroactive to June 22, 1950.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mrs. Heitz, was employed by Carrier on March 31, 1945. She was assigned to position as Stenographer-Clerk in the Superintendent's office at Aurora. Employees' Exhibits A and B.

Mrs. Heitz continued in the service of the Carrier in the Superintendent's office at Aurora until January 15, 1949. She was then furloughed account force reduction. Employees' Exhibits C (1), C (2), and C (3).

Mrs. Heitz did not exercise her seniority rights by displacing a junior employe, retaining her rights as provided for in Rule 15 (b) of the Agreement. That she holds seniority rights as a furloughed employe has not been questioned in our handling of this case with the Management, hence copies of seniority rosters are not here introduced in support of our statement. Her seniority date, as heretofore stated, is March 31, 1945.

On June 5, 1950 a vacancy occurred in Position No. 16 Messenger in the Supt. of Shops at Aurora, Illinois. This was advertised pursuant to our Agreement as evidenced by Notice No. 32 dated June 5, 1950, Aurora, Illinois. Employees' Exhibit D (1). Mrs. Heitz applied for this vacancy as evidenced by her letter of June 7, 1950. Employees' Exhibit D (2). On June 22, 1950 Mr. N. J. Bricher, Supt. of Shops issued Notice No. 32 assigning Miss Mary E. O'Banion to the vacancy advertised in Notice No. 32. Miss O'Banion was a new employe without employment relationship or seniority attachment

Superintendent's Office, for which she had submitted an application, and that she never would be fully qualified in that respect. It was also determined that she would not be satisfactory for the additional reason that she could not be promoted. For these reasons a young female stenographer was awarded this position instead of the claimant.

To sum up its principal points in this dispute, the Carrier epitomizes this submission as follows:

1. Claimant Annette B. Heitz, by reason of her age and bodily infirmities, is not physically qualified to perform the duties of messenger in the Shop Superintendent's Office.
2. Because she is admittedly capable of limited kinds of work only, she could not be promoted from the messenger position, and her stationary status would create an undesirable situation for breaking in new employees.
3. Rule 16 of the schedule, relied upon by claimant, gives the Carrier wider latitude in determining the fitness and ability of transferees than those who have a direct seniority right to the job applied for.
4. Claimant cannot successfully overcome the burden of proving her ability for this position, cast upon her by a long line of Third Division awards.

When all the facts in this case are fully considered, and the evidence on both sides weighed and evaluated, the Board must conclude that the Carrier did not err, and did not violate the agreement, when it refused the application of claimant for the messenger position in the Shop Superintendent's Office at Aurora, Illinois. In the face of this inevitable conclusion, the claim of Annette B. Heitz must be denied in its entirety.

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The Carrier affirmatively states that all data herein and herewith submitted has been previously submitted to the Employees.

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(Exhibits not reproduced)

OPINION OF BOARD: On June 7, 1950, the Claimant herein, Annette B. Heitz, applied for Messenger Position No. 16 in the Shop Superintendent's office at Aurora, Illinois. Claimant, with seniority in another seniority district, must be considered to have applied for this position under the provisions of Rule 16 of the applicable agreement. Rule 16 provides:

"Employees filing applications for positions on other seniority districts will, if they possess sufficient fitness and ability, be given preference on the basis of length of service on positions within the scope of these rules over non-employees or employees not covered by this agreement."

The messenger position was awarded to a non-employee (19-year old female), which fact gave rise to the instant claim.

In Award 6143, involving the same Carrier and Brotherhood as well as the same Rule 16 involved here, this Division said:

"It is the general rule, as established by the awards of this Division, that in the first instance the employer must be the judge of the

fitness and ability of an employe if there is nothing in the rules of the parties' agreement abrogating it. We find no such rule. In fact, the following language of Rule 16, 'if they possess sufficient fitness and ability', preserves it. Therefore, unless it is made to appear that the action of the Carrier was unreasonable, arbitrary or capricious its determination will be sustained. This burden rests upon the Claimant."

The essence of the Employees' position is that "in the instant case the Management has acted arbitrarily, capriciously and unreasonably". In defending its action the Carrier contends that Claimant was, among other things, "not physically qualified for this position".

In regard to the physical requirements of the position the Carrier states:

"The Aurora Shops, Storehouse, Laboratory and Roundhouse are in an enclosed area extending along the right-of-way for approximately two-thirds of a mile, and varying in width from one to three blocks. This messenger from the Shop Superintendent's Office reports for duty each day at the Aurora Passenger Depot, six blocks from the office, and picks up the mail for the Shop Accountant, Medical Examiner and Shop Superintendent. The incumbent is then required to make at least two trips daily throughout the area, picking up and delivering mail at 20 different points. This includes walking through several shop buildings past many obstructions such as wheels, trucks, cranes, moving turntables and cars. At many of the entrances to these structures there are doorsills extending a foot or more above the ground, especially where the door for pedestrians to walk in and out is cut out of a door large enough for locomotives and cars to enter. In several of the buildings the office where the mail is delivered and picked up is on the second or third floor. . . ."

While the Employees state that "There has not been one injury reported by girls on messenger position in the last ten years", they have not denied that the above-quoted Carrier statement is essentially correct.

In so far as Claimant's physical condition is concerned, the record discloses that Claimant has high blood pressure, for which she was denied membership in the so-called Relief Department, a voluntary organization of Carrier's employes providing benefits for sickness and disability. Moreover, the record discloses that Claimant has been found to have an umbilical hernia, and that she had signed a release agreeing to hold the Carrier harmless from liability resulting from aggravation of the hernia. Finally, while the fact that Claimant was over fifty years of age when she applied for the position would not, taken alone, be adequate basis for denying her application, even though most previous occupants of the position were under twenty-five years of age when occupying same, Claimant's age is not an irrelevant factor when considered in light of her physical infirmities as disclosed above.

The Employees state that Claimant has previously held a messenger position and held it satisfactorily. This is true. But that a critical difference exists between her former position and that here in question becomes obvious when one considers that her former position did not require Claimant to leave the building, all of her duties being performed in one location. The position now under consideration, on the other hand, requires the messenger to make deliveries throughout an extensive and congested area which includes the shops, storehouse, laboratory and roundhouse.

In view of the above considerations this Division cannot conclude that the Carrier was capricious, arbitrary or unreasonable in its determination as to Claimant's physical fitness and ability for the position in question. Without such a conclusion the Carrier's action must be permitted to stand.

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 Carrier did not violate the agreement.

AWARD

Claim (a) and Claim (b) both denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.