

Award No. 6477

Docket No. CL-6343

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the New York Central, Lines West, that Carrier violated the Clerks Agreement:

1. When they refused to pay M. J. Bernat one day's pay for July 21st, 1949 account of displacing Position #155; John Bawolak one day's pay for July 17th, 1949 account of displacing Position #143; S. A. Jablonski one day's pay for September 1st, 1949 account of displacing Position #177, J. T. Radziszewski two days' pay for December 24th and 25th, 1949 account of displacing Position #326; and S. W. Lockwood one day's pay for February 6th, 1950 account of displacing Position #181; and

2. That the Carrier now be required to allow these employes pay for the above dates.

EMPLOYEES' STATEMENT OF FACTS: Due to reduction in force; Mr. M. J. Bernat, who has a seniority dating of August 17th, 1925 and who had had ten (10) years of Yard Clerk experience, was forced to displace Yard Clerk Position #155 on July 21st, 1949. Mr. John Bawolak, who has a seniority dating of August 8th, 1936 and who has had six (6) years of Yard Clerk experience, was forced to displace Yard Clerk Position #143 on July 17th, 1949. Mr. S. A. Jablonski, who has a seniority dating of April 2nd, 1922 and who has had about eight (8) years of Yard Clerk experience, was forced to displace Yard Clerk Position #177 on September 1st, 1949. Mr. J. T. Radziszewski, who has a seniority dating of March 22nd, 1943 and who has had five (5) years of Yard Clerk experience, was forced to displace Yard Clerk Position #326 on December 24th, 1949. Mr. S. W. Lockwood, who has a seniority dating of May 22nd, 1925 and who has had seventeen (17) years of Yard Clerk experience, was forced to displace Yard Clerk Position #181 on February 6th, 1950.

After the above employes had made proper displacements on the positions mentioned above on the dates indicated; Carrier insisted that they qualify at their own expense on the dates displacements were made. This was protested by the employes and claims filed for the deductible days with the Carrier

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Carrier's place. It is solely a question whether the Carrier has shown reasonable ground for its action." (Emphasis added).

Third Division Award 3151; March 28, 1946; Clerks vs. Tenn. Ctl. Rwy. Co.

The Board, with Referee Edward F. Carter participating, denied the claim of the senior applicant and, in the last paragraph of the Opinion of Board, said:

"It is the function of management to select competent employees. Except where it has limited itself by contract, the right of selection is wholly within the discretion of management. This Board should hesitate to override the judgment of the Carrier on a matter of this kind and risk the inefficient performance of railroad operations. The present case is not one that warrants any interference by this Board with the decision made by the Carrier."

CONCLUSION:

The carrier has shown that:

1. No violation of the Agreement has been established;
2. The "Statement of Employees' Claim" does not allege violation of any specific Agreement Rule;
3. Rule 19, the "Displacement" rule of the Agreement in evidence, clearly provides that a displacing employee may be required to qualify at his own expense; Rule 7 that an employee assigned to a bulletined position will be allowed a reasonable time in which to qualify (obviously at his own expense);
4. Although the position from which displaced may be similar to position the displacing employee seeks to acquire by displacement, it does not necessarily follow that said displacing employee is automatically qualified to immediately take over the position sought without putting in some time to qualify therefor at his own expense;
5. The action of the carrier in connection with each of the claims included in this docket was not capricious nor arbitrary, was in good faith on the basis of the service record of the claimants and was in accord with the manifest intent of Rule 19;
6. Awards of the Third Division uphold the carrier's position that a displacing employee must be qualified for the position sought and may properly be required under application of Rule 19, applicable on this property, to qualify at his own expense;
7. The claims in this docket are not valid under applicable agreement rules, are built up on untenable premises and should be denied.

All evidence and data set for in this submission have been considered by the parties in conference.

OPINION OF BOARD: The Brotherhood of Railway Clerks alleges that the Carrier violated the Agreement when they refused to pay M. J. Bernat one day's pay for July 21, 1949 on account of displacing Position No. 155 and others for similar claims. It appears that due to a reduction in force M. J. Bernat, who has a seniority dating August 17, 1925, and who had ten years of yard clerk experience, was forced to displace Yard Clerk Position No. 155 on July 21, 1949.

After the above employes had made proper displacements on the positions mentioned above on the dates indicated, the Carrier insisted that they qualify at their own expense on the dates displacements were made. The rule in effect upon the above dates reads as follows:

"Rule 19—Displacement.

"Employes displaced, or whose positions are abolished, may exercise displacement rights within 10 days. Such employes will be given opportunity to qualify at their own expense."

The issue in this case involves the question of whether the above employes have a right to pay for services rendered while rendering a service in connection with the employe who is being replaced.

The Carrier urges that the action taken in requiring each of the four claimant displacing employes to spend one day at his own expense to enable him to become familiar with the territory involved and with the duties attached to the position sought, by accompanying the employe working the position, does not indicate bad faith, arbitrariness, capriciousness, bias or partiality and is not contrary to Rule 19.

It is the position of the Employes that Rule 19 was intended to protect the seniority of a senior employe who did not have the necessary ability or qualification to displace a junior employe due to mechanical device operation or technical training required on such positions; that employe Bernat has 10 years' yard clerk experience, Bawolak 6 years' yard clerk experience, Jablonski 8 years' yard clerk experience, and Lockwood 17 years' yard clerk experience and that because of such experience they had sufficient qualifications for the positions sought. The record of the Employes shows that:

"M. J. Bernat had been working at Orange Avenue Freight House for about 6½ years immediately preceeding July 21, 1949 when he sought to displace a Yard Clerk position in Rockport Yard, and he had never before worked as yard clerk in Rockport Yard since he entered service in 1925. About 22 years of his service had been in the Orange Avenue Freight House area.

"Stanley A. Jablonski, during the 9½ years immediately prior to his displacing Yard Clerk position 177 at Detroit Street September 1, 1949, had been working as a checker or clerk at Orange Avenue Freight House. During all his service since 1922, about 23 years, had been in the Orange Avenue Freight House.

"Sterling Lockwood, during the six years immediately prior to February 6, 1950, when he sought to displace Yard Clerk Job at Collinwood, had been a checker at Orange Avenue Freight House."

"Claimant Clerk John Bawolak sought to displace a Yard Clerk position in Linndale Yard July 17, 1949. He never before worked in Linndale Yard. During his 16 years of service since August, 1936, all but about 4 months had been worked in the Stock Yards or Orange Avenue Freight House."

The Agreement specifies qualifications as being a condition precedent to an employe's right to work on any position. It is agreed that the determination of fitness and ability rests with the Carrier. The Rule (19) provides "such employes will be given opportunity to qualify at their own expense." The Employes have not shown that there has been an abuse of discretion or a lack of good faith on the part of the Carrier in requiring the employes to demonstrate their ability and fitness to perform the work that they seek. Under the circumstances of this case, a reversal of the Carrier's judgment is not required.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of February, 1954.