

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

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

1. The Carrier violated the established practices, interpretations and rules of the Clerk's Agreement when it refused to assign the senior qualified clerk to a temporary vacancy, on May 22, 23 and 26, 1952 and on August 4th to 15th, 1952, both dates inclusive, and
2. The Carrier shall pay Clerk A. Bidovski, the difference in what he earned on the dates indicated above and the rate of pay of Chief Clerk J. Corcoran, who was absent.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement covering clerical and other office employees, as designated in Rule 1, Scope, Group 1, Clerks, between this Carrier and this Brotherhood. The Agreement was made effective April 1, 1938 and revised effective July 30, 1949, to include provisions of the 40 Hour Week Agreement. This Rules Agreement should be considered a part of the Statement of Facts. Various Rules and Interpretations may be referred to from time to time without quoting in full.

On May 22nd, 23rd and 26th, 1952, J. Corcoran was absent from duty by permission and a Junior Clerk, J. Grimes, Seniority 3-24-30, was assigned to his position. A protest was made by A. Bidovski, Seniority 9-9-26, that because he was the senior qualified Clerk in the office, he should have been assigned to the position.

On August 4th, 1952, J. Corcoran started his vacation and returned to duty on August 18, 1952. During the time Mr. Corcoran was absent, his position was again assigned to Mr. Grimes who is junior to Mr. Bidovski.

Protests were filed by the employees and eventually was handled with the highest officer of the Company.

The seniority standing of the employees involved is:

A. Bidovski	September 9, 1926
J. Grimes	March 24, 1930

In letter dated April 21, 1953 (Exhibit D) General Chairman C. W. Wysong claims that current Agreement Rules 1, 2, 3, 13, 17, 19 and 32 were violated and in his letter of February 1, 1954, (Exhibit B) he states Rules 1, 2, 3, 12, 17, 30, 32, 33, 34, 36 and 47 were violated. It is to be noted the difference in rules claims violated in the two letters.

The Current Agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is a matter of record.

The General Chairman does not state in just what manner the rules were violated.

The Carrier states that there is no rule in the current agreement that requires the Carrier to assign an unqualified employe to the position of Chief Clerk in the Accounting Department and that the rules the General Chairman refers to in his letters do not bear out his contention. As stated in the Carrier's letter of February 18, 1954 (Exhibit A) it would appear that the General Chairman is confusing the terms "qualifications" and "seniority" insofar as a Chief Clerk's position is concerned.

OPINION OF BOARD: Rule 12 (c) provides that "the position of Chief Clerk" need not be bulletined when vacant but "will be filled by the management by appointment of one of the employes covered by this agreement, if qualified."

In both Ex Parte submissions the temporary vacancy is stated to be in the position of "Chief Clerk" but, in the replies filed at the hearing here, a conflict has developed.

The Carrier asserts that there were created: in 1938 the position of Chief Clerk (Freight) and in 1939 the position of Chief Clerk (Accounting Department) and that both positions were filled by appointment in accordance with Rule 12 (c).

The Organization, on the other hand, now asserts that there never was any Accounting Department until after World War II and that, until the 1954 Seniority Roster was posted, J. J. Corcoran has always been carried on the Seniority Rosters as "Accountant" and not as "Chief Clerk, Accounting Department."

If the Carrier's assertions are correct, the claim should be denied by application of Rule 12 (c) for, if the Carrier has the right to fill a permanent vacancy in a Chief Clerk position by appointment, it certainly has the same right when the vacancy is temporary.

On the other hand, if the Organization's assertions are correct, Rule 12 (c) has no application and Rule 2 comes into play.

Second. If Rule 12 (c) has no application the Carrier's position comes down fundamentally to the proposition that temporary vacancies in this position have never before been filled on the basis of seniority and that Claimant is disqualified because he never worked the position.

Rule 2 is clear and unambiguous and cannot be altered by proof of contrary past practices. Past violations of the rule are therefore no defense to this claim.

The responsibilities for the selection of employes and their promotion is the Carrier's; and we should not substitute our judgment based on paper for the Carrier's first hand judgment except upon a showing of abuse of discretion. Previous training or experience is a proper factor to take into account in determining fitness and ability (Award 5292) but a choice such as this one, based solely on past experience in the particular job and not

upon general consideration of fitness and ability, constitutes an abuse of discretion (Award 7024 and awards cited).

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 Employees involved in this dispute are respectively carrier and employees 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 claim should be remanded for further handling in accordance with the foregoing opinion.

AWARD

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.