

Award No. 7037
Docket No. CL-7005

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated Rules of the Agreement governing the working conditions of the Employees by denying James Connor and Milford Ciaston, assorter's positions advertised in bulletins Nos. 1731 and 1732 on March 25, 1953 and also denied like positions to Edward Sullivan and Paul Kerrigan advertised in bulletins Nos. 1737 and 1738 on March 31, 1953, and

(2) That the above mentioned employees be awarded and assigned to the positions advertised in bulletins Nos. 1731, 1732, 1737 and 1738 and that they, and any other employees adversely affected by the arbitrary action of the Carrier, shall be reimbursed for any and/or all monetary losses sustained, retroactive to March 25, 1953 and up until such time as the violations are corrected.

EMPLOYEES' STATEMENT OF FACTS: On March 19, 1953, the Carrier advertised in bulletins Nos. 1731 and 1732, positions titled Assorters, Passenger Accounts Division, rate of pay per day \$11.3350, in the office of the Auditor of Revenues, Scranton, Pennsylvania. On March 25, 1953, two identical positions in the same office, carrying the same rate of pay were advertised in bulletins Nos. 1737 and 1738. The duties attached to the aforementioned positions—as shown on the bulletins referred to—indicate the following:

"To open mail and sort waybills and tickets received from Agents and Conductors, also to perform other assigned duties and handle records to and from record room".

At the time James Connor and Milford Ciaston made application, in the proper manner prescribed in the Clerks' Agreement, to the two (2) positions advertised in bulletins Nos. 1731 and 1732, they held seniority dates of 12-27-46 and 12-23-47 respectively, on a seniority roster identified as the Operating Department-Scranton Division Roster, one separate and distinct from the Auditor of Revenues Departmental Roster.

that part of the claim which reads "* * * and other employes adversely affected by the arbitrary action of the Carrier * * *". Claims for such individuals have not been handled on the property and therefore are not properly before your Board.

These claims should all be denied because there is no rule, precedent or practice which would support the Employes nor have the Employes been able to produce any proof to support their position in these cases.

All data in support of the Carrier's position has been handled with the Employes on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 35 provides that employes applying for positions on other seniority districts will be given preference over non-employes "if possessing sufficient fitness and ability". The claimants held seniority in the Operating Department and applied for assorter positions in the Auditor of Revenues Department. They were given relatively simple arithmetic tests and scored from 40% to 50% correct. They were not assigned to the positions on the basis that they did not possess sufficient fitness and ability.

Whether an employe has sufficient fitness and ability to fill a position is usually a matter of judgment and the exercise of such judgment is a prerogative of the management. We have regularly held that unless it has exercised that judgment in an arbitrary, capricious or discriminatory manner, we will not substitute our judgment for that of the management.

The Organization contends that the test given was not related to the duties of the assorter positions, whereas the Carrier asserts that such test aids in determining whether applicants possess sufficient speed and accuracy to fill such positions.

It appears that such tests have been given to applicants for those positions for many years and upon all of the evidence presented we are unable to say that those tests are wholly inappropriate for or unrelated to a determination of fitness and ability to fill the assorter position, nor that the management's exercise of judgment was arbitrary, capricious or discriminatory.

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 29th day of June, 1955.