

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier did not properly apply certain applicable rules of Agreement governing working conditions of employes, effective January 1, 1939, and also provisions under the G. I. Bill of Rights:

(1) When returning war veteran, Edward Cole Jr., was denied the right to positions bulletined during his absence from the railroad while engaged in Military Service.

(2) That claimant, Edward Cole Jr., shall be assigned to a position of Mail Clerk in the Freight Traffic Department of the Carrier at 140 Cedar Street, New York City, and shall be accorded a seniority date on the roster embracing employes in said department as of July 1, 1953.

(3) That Edward Cole Jr., be paid the difference between what he has subsequently earned and what he would have earned, had Carrier properly assigned him to the position of Mail Clerk, retroactive to date on which a new employe was assigned thereto.

EMPLOYES' STATEMENT OF FACTS: The Claimant in this case entered the service of the Carrier on August 6, 1951, in the Operating Department and is so recorded on the seniority roster embracing Group 2 employes of the Division in said department. He also carries a Group 1 seniority date in said department as of August 31, 1953.

On November 16, 1951, at which time the Claimant held an employe's status under the provisions of the applicable Clerks' Agreement, that is, he was at that time performing extra duties in the Operating Department at Hoboken, New Jersey, he entered the U. S. Navy. During the interim of November 16, 1951 up to July 1, 1953, it became necessary for the Carrier to advertise a position in the Freight Traffic Department at New York City, titled Mail Clerk. This position was advertised under Bulletin No. 243, dated June 22, 1953, and subsequently assigned to a new employe, R. R. Deckenback, as per assignment Bulletin No. 251, date September 14, 1953.

The intercity trucks, bus lines and air lines, subsidized by publicly provided roads and terminals, have made vast inroads on rail traffic and now air freight is also beginning to bleed traffic from the rails.

An excellent biologist or division superintendent or yard clerk might be an unacceptable candidate for a position in the Traffic Department.

However that may be, and entirely apart from suitability for employment in the Traffic Department where the claimant has no seniority therein the claim asserted is groundless and should be dismissed or denied. (Awards 6914 and 7103.)

All data in support of the Carrier's position have been discussed with the Employees on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Cole entered the Carrier's service on August 8, 1951 when he was assigned temporarily to a position of Mail Clerk, Freight Traffic Department, New York City. On August 20, 1951 he was reassigned to the Operating Department at Hoboken, New Jersey where he worked as an Extra Messenger. On September 6, he was transferred as an extra employe to a Baggage Porter position at Hoboken and on October 22, 1951 the Carrier reassigned him to an Extra Messenger position in the Hoboken Yard Office. On November 1, 1951, the Claimant entered Military Service with the Navy. As of the time he left for military duty Cole had not been awarded a bulletined assignment and therefore held no seniority status under the Agreement. He was still a temporary employe.

On June 22, 1953, while the Claimant was still in the Navy, Carrier bulletined a Mail Clerk position in the Freight Traffic Department in New York City. Cole was released from Military Service about two weeks thereafter and returned to the Carrier, whereupon he requested to be assigned to the Mail Clerk vacancy which was still unfilled. The Carrier interviewed Cole in this respect but did not give him the position. Instead, on August 18, 1953, Cole was assigned as an extra employe in the Operating Department, in the capacity of Baggage Porter, Hoboken, New Jersey. On September 3 and 17, he was given other temporary assignments, and finally on May 12, 1954 he received a regular assignment in the Operating Department. The Carrier placed him on the Clerks' seniority roster of the Yard Office with a Group 2 seniority date of August 21, 1951 and a Group 1 seniority date of May 12, 1954. The bulletined Mail Clerk position in the Freight Traffic Department which Claimant Cole had unsuccessfully requested in July 1953 was assigned to a new employe effective as of September 14, 1953. On the latter date and again on September 21, 1953 the Carrier advertised two other Mail Clerk positions in the Freight Traffic Department to which the Claimant also requested assignment. His requests were ignored in each instance and a new employe was given the assignment.

The Organization contends the Carrier's refusal to "restore" the Claimant to the Mail Clerk vacancy still existing when he returned from Military Service was violative of his rights under the Selective Service Act and under the Agreement between the parties. The Carrier denies any such violation.

We have seen that Claimant Cole was occupying a temporary position when he entered Military Service and that each of his assignments prior to that time had been of a temporary nature. The Carrier had no legal obligation under the Selective Service Act to return the Claimant to its employ, since the Act does not prescribe re-employment rights for persons holding "temporary" positions with an Employer. The confronting question thus becomes whether the Claimant was entitled under the contract to the Mail Clerk vacancy existing in July 1953. This vacancy existed in a seniority district other than the one in which the Claimant was working immediately prior to his departure for Military duty. He was not on any seniority roster and therefore had no seniority status either at the time he entered Military

Service or upon his return therefrom. The most relevant of the contract provisions cited by the Petitioner is Rule 35 which provides:

"Employees filing applications for positions bulletined on other seniority districts will be given preference over non-employees and, or employees not covered by these Rules, on the basis of their seniority rights, if possessing sufficient fitness and ability."

The Organization contends that no other employees having filed applications for the vacancy, and since Claimant's "fitness and ability" were not seriously questioned, Carrier was required to give him preference over non-employees, even though Claimant held no seniority at the time. Our construction of Rule 35 does not support this conclusion, however. The Rule provides that employees filing applications for the indicated positions will be given preference. "... on the basis of their seniority rights . . ." The prime requirement is that an employee benefitting from this Rule must have seniority rights. Since the Claimant did not have such rights as of the time in question it follows that the Carrier's refusal to award the requested position to the Claimant did not violate this Rule. We are unable to find any other Rule in the Agreement which was violated in this instance.

The Organization contends that Management had a moral obligation to assign Mr. Cole to the Mail Clerk position since he had been deprived of the opportunity to acquire seniority status by virtue of his Military Service, and particularly since he had once held such a position on a temporary basis. The task before us, however, is one of applying the parties' contract to a specific factual situation. We are not empowered to enforce our concept of moral obligations. We are impelled to conclude that the claim is without merit and must be denied.

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 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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of November, 1957.