

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

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**PARTIES TO DISPUTE:**

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

**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement when:

- (a) On September 15, 1954, it advertised for bid a position as Chief Clerk and did not comply with the provisions of the Bulletining Rule of the Agreement when designating the preponderant duties on said advertisement.
- (b) On September 23, 1954, it assigned an employe seven years junior to A. J. Robertson, Jr., in seniority, to the position of Chief Clerk when Clerk Robertson had sufficient fitness and ability to be assigned thereto.
- (c) That the Chief Clerk's position be advertised in accordance with Rule 21 of the Agreement.
- (d) That, A. J. Robertson, Jr., (hereinafter referred to as Claimant) be paid the difference in the daily rate of the Chief Clerk and Accountant's positions (\$.27 per day) for Tuesday, October 5, 1954, and the same for each and every day of the Monday thru Friday work week of the Chief Clerk's position until said position is assigned to Claimant.

**EMPLOYEES' STATEMENT OF FACTS:** The facts of this claim are incorporated in the investigation requested by Claimant which is attached hereto and made a part hereof and designated "Employees' Exhibit A".

Due to the fact that the incumbent of the Chief Clerk's position at the freight station, Savannah, Georgia, (Julius Sack, seniority date 8-1-06) was retiring on October 1, 1954, it was necessary for Carrier to advertise his vacancy on September 15, 1954, so that the position could be filled on the date of his retirement. The following bulletin of advertisement was circulated:

**OPINION OF BOARD:** The Chief Clerk at the Carrier's freight station in Savannah, Georgia, was scheduled to retire effective October 1, 1954. The prospective vacancy was bulletined on September 15, 1954. Seven clerks applied, including Claimant with 37 years seniority and then occupying the position of Accountant.

The Chief Clerk's position was awarded to one Jones, junior to Claimant by seven years. This grievance then followed.

The primary issue in this case is whether, in denying the position to Claimant, the Carrier violated Rule 6 which provides:

"Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to the excepted positions covered \* \* \*.

"Note: The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a 'new position' or 'vacancy,' where two or more employees have adequate 'fitness and ability.'"

The Carrier asserts as its reason for not awarding the position to Claimant that he lacked rating experience and was not qualified since the Chief Clerk was required to supervise employees performing rating work.

It is recognized that Management has the right to determine the fitness and ability of an applicant and its judgment in this regard will not be set aside unless capricious or arbitrary (Award 3273, Carter).

On the record in this case we find that the Carrier erred in not granting Claimant's bid.

The previous Chief Clerk and whose retirement caused the vacancy herein involved had, some two months before retirement, prepared for his supervisor a list of twelve duties assigned to him as Chief Clerk. He also kept a more detailed list of duties at his desk for the benefit of his relief. Neither list mentioned any rating work; and as Chief Clerk, he never did this type of work.

Although the Claimant was not considered qualified for the position of Chief Clerk, the record shows, without even a suggestion of contradiction, that Claimant had in his 37 years at this station worked every one of the 12 or more jobs in the Agency, except that of Rate Clerk. During his long tenure at Savannah, Claimant instructed other clerks in their duties. So far as the Chief Clerk's job is concerned, Claimant had worked it on a number of occasions and even after Mr. Jones was given the job, Claimant worked the Chief Clerk's position during Jones' vacation.

No question was raised as to the Claimant's performance on the job or his fitness or ability. The only objection was that his lack of rating experience barred his selection as Chief Clerk. The Carrier's determination was made not on an assessment of Claimant's "fitness and ability" but rather on a lack of experience on one class of work which had never theretofore been performed by the Chief Clerk.

Carrier seems to have ignored the fact that the job involved is that of Chief Clerk. Had the job been that of Rate Clerk we might possibly conclude otherwise, but as Chief Clerk, the incumbent does not necessarily have to be experienced in every single job under his jurisdiction. There is no evidence in this record that applicant could not do the Chief Clerk's job; instead the evidence shows that he could and actually did do the job in the past.

Carrier's determination was based upon a standard that we deem unreasonable in the circumstances of this case. If as Carrier contends an applicant had to have experience in a position to which he aspires so as to be able immediately to take over, seniority rights would be rendered ineffectual. The

Carrier demands actual experience before it will find a candidate qualified but Rule 6 does not state this as a condition. It provides for "fitness and ability." This means "reasonable fitness and ability to learn and perform the duties of the position, to be demonstrated by a thirty-day trial under proper supervision and direction,—not superior immediate fitness and ability resulting from actual past experience in performing the work incident to the particular position" (Award 3102, Shake). And under Rule 10, the applicant has 30 days in which to demonstrate that he has the needed qualifications. If the ability to take over immediately was the standard, then there would be no need for the 30-day qualification period. That such a period is provided indicates that the parties, mindful that an applicant may not be experienced in the new job, agree that an opportunity should be given to an applicant with the requisite "fitness and ability" albeit inexperienced. As we have heretofore pointed out, Rule 6 does not require prior experience, otherwise it would be practically impossible to secure employees for new positions (Award 3139, Youngdahl).

Appropriate in this case is our decision: "fitness and ability \* \* \* does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance. It means that the applicant must have such training, experience and character as to raise a reasonable probability that he would be able to perform all the duties of the position within a reasonable time" (Award 5348, Robertson).

*In our opinion the Carrier here refused Claimant's application by applying the single standard of experience as Rate Clerk—a standard for which the Rules make no provision and which if enforced would completely destroy promotional rights and nullify seniority as a factor in promotion "where two or more employees have adequate 'fitness and ability'" (Rule 6).*

The record satisfies us that an injustice was done the Claimant when the Carrier arbitrarily and capriciously denied him the bulletined vacancy.

It is also contended by the Employees that the Carrier's bulletin of September 15, 1954 advertising the Chief Clerk's position was not adequate. This contention, however, we cannot accept. The whole purpose of bulletining a vacancy is to acquaint employees with the nature of the duties of the job so that they may determine for themselves if they are sufficiently qualified to bid (Award 1316, Wolfe). Of the 12 employees at Savannah, 7 submitted bids. This by itself, is proof that the bulletining gave sufficient notice of the job content of the Chief Clerk's position.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 violated the Agreement as stated in the Opinion.

#### AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.