

Award No. 8430
Docket No. CL-8055

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier violated the Clerks' Agreement:

(1) When on August 16, 1954 the carrier failed to assign Mrs. Henry A. Mann to the position of Abstracting Machine Operator, Desk No. 30, (Auditor's Office, Nashville, Tennessee), thereby refusing her the right to exercise her seniority rights to this position, this being the result of bulletin dated August 2, 1954, "File 4804" abolishing the job of Interline Abstract Clerk, Desk No. 20, which she held, allowing Mrs. Annie A. Talley to remain on the job although she had less seniority.

(2) That Mrs. Henry A. Mann be assigned to the position of Abstracting Machine Operator, Desk No. 30, Auditor's Office, Nashville, Tennessee, and be compensated for all monetary loss sustained by the carrier's failure and refusal to comply with the terms of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On August 2, 1954, five positions in the Auditor's Office, Nashville, Tennessee, were abolished by bulletin designated "File 4804" which bulletin follows:

"ACCOUNTING DEPARTMENT

BULLETIN

Nashville 3, Tennessee,
August 2, 1954,

File: 4804

Clerical Employees,
Seniority District No. 1

Due to the elimination of considerable work in the Freight Department as a result of changes to be made in the methods of ac-

specific reference to another clerk in this connection was statement of General Chairman Horton in the conference on December 3, 1954 that Local Chairman Lamberth, who is employed as Revising Clerk in the Accounting Department, could testify to claimant's qualifications, whereupon Mr. Lamberth promptly declared that he could not do this as he did not know.

The Carrier has knowledge of the principle enunciated by your Board concerning the right of Management to select competent employes and points to Award 3151 involving claim of a clerk on this property (and there are many awards of similar tenor by your Board both prior and subsequent to the one here referred to).

Opinion of Board in that Award reads in part:

"It is the function of management to select competent employes. 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."

Your Board is here advised that there has been no change in the rules of the applicable agreement which in the opinion of Carrier are pertinent to circumstances of instant case since date of the claim decided by Award 3151 referred to above.

As it has been shown that claimant employe, Mrs. Mann, was not qualified for the position of Abstracting Machine Operator, and at no time in the handling of the case on the property has any substantial and competent showing been made that she was so qualified, and Carrier respectfully submits that the claim should be denied in its entirety.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In a reorganization of its Accounting Department at Nashville, Tennessee, Carrier abolished five positions as of August 16, 1954, one of which was that of Interline Abstract Clerk, Desk No. 20, which had been worked just previously for 18 days by Claimant Mrs. Henry Mann. A new position of Abstracting Machine Operator, Desk No. 30, was at that time created, combining some of the duties of Interline Abstract Clerk with those of Typist and Abstract Clerk. Claimant, with seniority date of June 18, 1945, bid for the new position, asserting that she possessed sufficient ability and that she was willing to work overtime to learn the duties of the job. Carrier declined her application, stating that she did not possess the "qualifications and experience" for the new position; and Carrier then awarded it to employe-applicant Annie Talley, with seniority date of September 15, 1945.

Employes argue that Carrier's decision was arbitrary, capricious, and unfair, constituting an abuse of discretion under Rules 4, 7(a), and 17, be-

cause (1) many employes and two former supervisors stated she was an able and cooperative employe and could with training have learned competence on the new position; (2) Carrier awarded the position on the basis of its belief that Talley was more able than Claimant rather than on the basis that Claimant's ability was not sufficient; (3) Talley had to be trained, just as Claimant would have; (4) Carrier's use of "experience" as a basis was improper, Rule 7(a) mentioning only "fitness and ability"; (5) Claimant did not have a fair or long enough trial as Interline Abstract Clerk; (6) Claimant was the victim of personal animosity, bias, and discrimination by supervisor Martin; and (7) Carrier could at least have given Claimant a reasonable trial or test on the new position.

Carrier stresses the importance and difficulty of the new position; denies that Martin had any animosity or bias toward Claimant or that same affected the decision; testifies that Claimant's previous work record, particularly on the position of Interline Abstract Clerk, afforded a proper and adequate basis for the reasonable judgment that Claimant's fitness and ability were not sufficient; denies that the decision was based on a comparison of the abilities of Talley and Claimant, citing previous instances of filling vacancies not with the ablest applicant but with the senior employe who had merely requisite qualifications; and denies that its decision was in any way arbitrary and capricious.

From a study of the whole record the Board is forced to conclude that the Employes have failed to support their contention. That is, the Carrier's decision not to assign Claimant to the new position is not found to have had such an arbitrary, capricious or unreasonable basis as to have constituted a clear abuse of managerial discretion and as to justify this Board now to substitute its own judgment for that of the Carrier. In the first place, the use of the words "qualifications and experience" instead of "fitness and ability" in the original letter declining Claimant's application cannot reasonably ground the conclusion that Rule 7(a) or 17(f) were violated. "Qualifications" may properly be considered to be synonymous with "fitness and ability". And an employe's work record or experience certainly provides one way of judging fitness and ability. Second, it is true that an actual trial period on a new position is a superior way of judging ability thereon. But the Parties' agreement does not require Carrier to use this method. Third, there is no substantial evidence that Carrier filled the vacancy by comparing Talley with Claimant rather than by deciding that Claimant would be unable, even after training, to do the work effectively. Fourth, Carrier was able to show that Claimant lacked competence as an Interline Abstract Clerk, although admittedly her tenure on that position was rather short. Fifth, the Employes failed to establish that the personal conflict between Martin and Claimant which occurred years before continued to the date of decision and influenced same.

For these reasons a sustaining award is not here in order.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: Ivan A. Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1958.