

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement at Muskogee, Oklahoma, beginning November 22, 1955, when,

(a) It assigned Mr. C. H. Hanson to temporary vacancy, covered by Bulletin No. 328, dated November 14, 1955, at the Muskogee Station, and declined and refused to consider the application of Mr. Harold Mill, the senior applicant, and,

(b) That Mr. Harold Mill shall now be assigned to the position described in Bulletin No. 328 and compensated for all monetary loss sustained until final settlement of this claim.

EMPLOYES' STATEMENT OF FACTS: On January 12, 1954 the carrier addressed letter to the General Chairman advising that certain employes in Seniority District No. 5, Muskogee Station & Yard, who desired to break in on the position of Cashier-Clerk, Muskogee Station, in order that they be familiar with the duties and be able to fill the position if and when there was a requirement for their services, would be permitted to do so. Mr. Harold Mill was one of the employes desiring to break in on this position as is shown in carrier's letter of January 12, 1954.

On November 16, 1955 Mr. Mill called Agent J. S. Bynum on the phone and advised him that he would like to come down and break in on the position of Cashier-Clerk in order to work temporary vacancy on that position. Agent Bynum advised Mr. Mill that he would call him back in a few minutes. In approximately 10 minutes Agent Bynum called Mr. Mill and advised him that Mr. Dodson, Assistant General Manager, said that since the vacancy was for only a short time that he would not advise permitting Mr. Mill to break in.

On November 14, 1955 the position of Cashier-Clerk, Muskogee Station, was advertised as a temporary vacancy by Bulletin No. 328 due to the occupant thereof, Mr. J. A. Morton, being ill.

Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission.

All data submitted herewith in support of the Carrier's position has been presented to the employes or their duly authorized representative and is hereby made a part of the matter in dispute.

(Exhibits not Reproduced.)

OPINION OF BOARD: This docket concerns a claim made by Harold Mill, for all monetary loss as alleged, for refusal of Carrier to assign him to position described in Bulletin No. 328 and for further ground it is alleged Carrier refused and declined to consider said employe as an applicant to the position as contended.

Carrier takes the position that the employe failed, when Carrier offered the opportunity to Claimant and other employes, to break in on the position of Cashier-Clerk, at Muskogee, Oklahoma, which was suggested by Carrier in January 1954, but which position was not advertised for bid until November 14, 1955, and awarded to another employe.

The facts of record show that Claimant held seniority over two other applicants for the position. The position was awarded to an employe having seniority junior to the Claimant.

A review of the record before us does not show that Carrier acted in a capricious or arbitrary manner by its action. The Claimant had sufficient opportunity to exercise his rights to qualify for the position, but failed to do so. Carrier had an inherent right to specify the qualifications necessary to perform the position requirements. Claimant has nowhere in the record shown that he had the knowledge and experience to qualify for the position. He had the required seniority, but did not possess the fitness and ability to qualify. Nor did he avail himself within a reasonable time, to prepare to qualify for the position.

Carrier did not violate the provision of Rule 8—Promotion, Assignments and Displacements, nor did it act in an arbitrary manner in making the assignment.

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 Carrier did not violate the Agreement as alleged. Claim should be denied.

AWARD

Claim denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1959.