

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-2 (a) and 3-H-1, when it refused to permit B. A. Kryger to exercise his seniority on a Foreman's position at Canton Freight Station, Baltimore, Maryland, Chesapeake Region, in accordance with Rule 3-C-1 (c) on January 31, 1956.

(b) B. A. Kryger, Claimant, be assigned to his position and be compensated for all lost earnings beginning February 1, 1956, and all subsequent dates until adjusted. (Docket 78.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

On and prior to February 1, 1956, the Claimant, B. A. Kryger, had seniority on the Group 1 and Group 2 Seniority Rosters, Chesapeake Region

the Employees' present contention that the Carrier, in some unexplained manner, violated the said rule.

In summary, the Carrier submits that in determining that the Claimant was not qualified for the position of Foreman at Pier No. 1, Canton Freight Station, it has met all the tests set forth in the Awards of your Honorable Board herein referred to. Its action in this respect was not arbitrary, capricious or unreasonable, but was taken only after full consideration of all the facts involved and in conformity with both the spirit and intent of the Agreement as it has been interpreted by the parties.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that no violation of the Agreement occurred by reason of not permitting the Claimant to exercise his seniority to a position of Foreman at Pier No. 1, Canton Freight Station, and the Claimant is not entitled to any alleged loss of earnings.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that Carrier violated the applicable Agreement when it failed to permit Claimant to exercise his seniority on a Foreman's position on February 1, 1956.

Rule 2-A-2, the controlling provision on the point, requires that in the assignment of employees to positions, "fitness and ability being sufficient, seniority shall govern". The question of sufficient fitness and ability is a matter of judgment and, as this Board has frequently pointed out, it is not disposed to substitute its judgment for that of management with respect to those qualifications, unless it is established that management has exercised its judgment in an arbitrary, capricious or discriminatory manner. See Awards 6178, 6028, 4040.

The record is barren of proof that Claimant was singled out for discriminatory treatment or that he was qualified to perform the work of the position in question. Nor does the evidence establish that the Carrier's action in denying his application for the position was arbitrary or capricious. On the contrary, it affirmatively appears that before reaching their decision as to fitness and ability, the appropriate managerial employees considered Claimant's record of service as well as his performance in a written examination concerning foreman duties and responsibilities.

Some point has been made that Carrier violated Rule 3-H-1 which permits an employee, "if he so desires", prior to exercising seniority, to post without pay on any position to which his seniority entitles him, "with a reasonable amount of assistance from those qualified to give same". However, there is no evidence that Claimant notified Carrier of his desire to take advantage of this provision prior to exercising his seniority.

In the light of the foregoing considerations, the claim will 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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of June, 1961.