

Award No. 10000
Docket No. CL-12091

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

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

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4838) that:

(a) Carrier violated the rules of the Clerks' Agreement when it failed and refused to assign Mr. Gilbert R. Genet, the senior qualified and only bidder, to the position of Relief Clerk, Position No. 95, Los Nietos Yard, advertised in Notice No. Supt. 41, dated April 24, 1959, and denied him the right to demonstrate his fitness and ability thereon.

(b) That employe G. R. Genet be compensated for net wage loss, at the rate of pay of Job 95, Relief Clerk — Los Nietos from April 30, 1959 to the date violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. R. Genet was employed by the Pacific Electric Railway Company on October 23, 1952, and on April 24, 1959 was an active unassigned extra clerk on the Butte Street Yard Office Extra Board. As such he was entitled to fill vacancies, and exercise his seniority under the provisions of Rules 24, 25 and other rules of the current Clerks' Agreement.

Under date of April 24, 1959, Carrier issued Superintendent's Bulletin No. 41, advertising Job 95 — Relief Clerk — Los Nietos (Employees' Exhibit No. 1), closing 12 Noon April 30, 1959. Under date of April 30, 1959, Chief Clerk L. H. Cobb called Mr. Genet by telephone and advised him that he (Genet) was the senior bidder on Position No. 95, but that he would not be assigned thereto because the Carrier contended that he was not qualified as Train Clerk. No opportunity was given Mr. Genet to demonstrate his fitness and ability to work Job 95 at Los Nietos.

Bulletin 41-A was issued under date of May 1, 1959 reading in part: Job 95 — Relief Clerk — Los Nietos "No Bids — Rebulletined". (Employees' Exhibit No. 2).

Under date of May 27, 1959 claim was presented on behalf of Mr. Genet to the Carrier (Employees' Exhibit No. 4). Claim was denied by Superintendent Yeager on July 6, 1959 (Employees' Exhibit No. 5). Under date of July 23, 1959 letter was addressed to Mr. D. W. Yeager, Superintendent (Employees' Exhibit

to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant an active unassigned clerk, bid on a bulletined position of relief clerk. This position furnished relief for car clerk, train clerk and messenger clerk at various times during the week. The relief clerk position required a knowledge and ability to operate four different types of IBM machines. Carrier refused to assign Claimant to the relief position contending that he was not qualified.

Under date of May 27, 1959 claim was presented on behalf of Claimant to the Carrier. This claim was denied. There was then requested a conference with the Superintendent, said conference being held on July 29, 1959.

After this conference was held the claim was again denied.

The applicable rule in this case is Rule 25 of the Agreement. This rule provides:

"Promotions, Assignments and Displacements.

Promotion, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

Note: The word sufficient is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy or make a displacement where two or more employes have adequate fitness and ability.

Note: This rule contemplates that the senior employe will be awarded the position unless it is obvious that he cannot qualify."

At the conference the Carrier showed that the Claimant had never operated the IBM machines in question and as far as the Carrier knew the Claimant had acquired no knowledge as to the operation of the equipment.

The only evidence as to the Claimants qualifications came from a chief clerk in a letter which stated that Claimant spent 40 hours of his own time qualifying himself for the duties of the train clerk prior to time that he was disallowed a bid on a permanent job at that location. This letter does not certify that the Claimant spent 40 hours breaking in on the IBM machines nor does it contain any statement that Claimant was in fact qualified to run the equipment.

It is not the function of this Division to determine whether Claimant was or was not qualified for the position he sought. Rather it is our duty to determine whether he met the burden of proving he was qualified after Carrier's initial determination that he was not qualified. A search of the record fails to reveal any evidence of a probative nature presented on behalf of the Claimant which shows that he was qualified. Under this state of the record the Board has no alternative but to deny the claim. (See Awards 8214, 1147 & 2031 among others.)

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 19th day of July 1961.