

Award No. 10180

Docket No. CL-9974

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

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

PACIFIC ELECTRIC RAILWAY COMPANY

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

1. Carrier violated and continues to violate agreement rules by failing and refusing to award position of General Clerk, Job No. 5, to employe Eileen Dillon, pursuant to Treasury Department Bid Notice No. 1, closing December 24, 1956.

2. Carrier shall now pay Eileen Dillon for all wage loss sustained, effective January 1, 1957, and for each work day thereafter that violation continues.

EMPLOYEES' STATEMENT OF FACTS: By Bid Notice No. 1 dated December 18, 1956, Employees' Exhibit No. 1, Carrier advertised for bids the position of General Clerk, Job No. 5, then carrying rate of pay of \$17.30 per day, with closing date for receiving bids from employes on Roster 10 and other Rosters in the Seniority District as December 24, 1956, assignment to become effective January 1, 1957.

Among the bids received from employes whose fitness and ability for the position are unquestioned, were bids of Eileen Dillon, with seniority date of December 26, 1946, and Nancy Benham, with seniority date of February 11, 1953, both employes having seniority on Roster No. 11, Accounting Department.

By Bid Notice No. 1-A dated December 27, 1956, Employees' Exhibit No. 2, position of General Clerk, Job No. 5, was awarded to Nancy J. Benham, the applicant junior in seniority to Claimant Eileen Dillon. Employe Benham assumed incumbency of Job No. 5 effective as of January 1, 1957.

Claim was presented in behalf of Eileen Dillon by the General Chairman on January 8, 1957, Employees' Exhibit No. 3, and upon declination by the Treasurer, Mr. A. E. Hanna, Employees' Exhibit No. 4, was appealed to the Manager of Personnel, Mr. L. R. McIntire, Employees' Exhibit No. 5. Claim was declined by Mr. L. R. McIntire on March 1, 1957, Employees' Exhibit No. 6. Mr. L. R. McIntire, Manager of Personnel, is the designated chief operating officer of the Carrier to consider such matters, as comprehended by the Railway Labor Act.

OPINION OF BOARD: A general clerk's position was open in the Carriers Treasury Department on Seniority Roster No. 10 and the Carrier put the position up for bids. In answer to Bid No. 1, dated December 18, 1956, the Carrier received the following response:

Name	Seniority Date	Seniority Roster
Donald R. Williams	9/ 3/45	3 (Operating Department)
Erma E. Dillon	12/26/46	11 (Accounting Department)
Nancy A. Benham	2/11/53	11 (Accounting Department)
Margaret B. Grace	3/ 5/53	4 (Purchasing Department)

Mr. Williams, the senior candidate, after being interviewed for the position by Mr. A. E. Hanna, Carrier Treasurer, declined it. The Carrier on December 27, 1956, awarded the position to Miss Nancy A. Benham, effective January 1, 1957.

The Organization maintained that the Carrier violated Rules 24, 25, 26, 27 and 28 of the current Agreement.

The Carrier claimed that its action in appointing Miss Benham to the disputed position was in keeping with the provisions of Rule 29(j) of the Agreement.

Although other rules were cited, we believe Rules 25 and 29 control. The pertinent provisions of those rules are as follows:

"RULE 25

"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."

"RULE 29

"BULLETINS

"(g) In making assignments preference will be given to bids received as follows:

"First — From employes within the scope of the roster (as established in Rule 26) where the vacancy occurs or new position is created.

"Second — From other employes in the seniority district.

"(j) Applications for positions from employees on other seniority rosters covered by this Agreement having sufficient fitness and ability will be given preference over those of employees from departments not covered by this Agreement or new employees.

According to proceedings on the property, Carrier Treasurer A. E. Hanna, in his letter of January 11, 1957 to General Chairman R. V. Rachford, gave the following reason for declining Claimant's bid:

"The claim of Miss Dillon is rejected for reasons outlined in conference with you in my office January 11, 1957."

In Mr. Rachford's appeal letter of January 11, 1957 to Mr. L. R. McIntire, Manager of Personnel, he (Rachford) stated in part as follows:

"In conference, Mr. Hanna has contended that Miss Dillon was not assigned in preference to the junior employee for the reason that when employees bid from other rosters for the position, as in this case, he should be permitted to select the best qualified employee as he states was done."

Mr. McIntire's reply of March 1, 1957, maintained that the filling of the position in question was in accordance with the provisions of Rule 29 of the current Agreement and reaffirmed Mr. Hanna's denial of claim.

It is to be noted that the question of Claimant's ability, fitness and qualifications for the disputed position were not raised on the property. Therefore, it may not now be stated that the Claimant was not qualified for the position.

Rule 25, *supra*, is a simple, explicit rule and needs no interpretation from us.

The Carrier maintains that Rule 29(j) permitted it to select an employee junior in seniority to the Claimant, because the bidding employees in this case were from another seniority roster.

Rule 9(j), cited above, is only preferential in that it favors qualified employees covered by the Agreement over those employees not covered by the Agreement or new employees. It does not, however, establish any order of preferences for employees already covered by the Agreement.

The Carrier's interpretation of Rule 29(j) is not in keeping with the simple and clear language contained therein.

The controlling rules in this case are first 29(g) and then 25. There is no doubt the Carrier violated those Rules, accordingly, we must sustain the Organization's claim.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1961.