

Award No. 11572
Docket No. CL-11549

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Clerks' Agreement when it failed and refused to assign Mrs. Clydia M. Simmons, senior applicant for position of Mail Clerk No. 5 in General Office Mailroom, Dallas, Texas, advertised by Bulletin No. 3 dated March 11, 1958.

(2) The Carrier now be required to compensate Mrs. Clydia M. Simmons for any loss she may have sustained retroactive to March 17, 1958, and forward until she is placed on said position.

EMPLOYEES' STATEMENT OF FACTS: The Claimant herein has been employed by the Carrier since 1930 and has been an Elevator Operator since 1931 in the General Office Building at Dallas, Texas and holds her seniority rights in Seniority District No. 24 covering Elevator Operators and Mail Room employees.

On March 11, 1958 the Carrier issued Bulletin No. 3 advertising a vacancy in Position of Mail Clerk (0-5), Seniority District No. 24. (See Employees' Exhibit No. 1.) Claimant filed her bid for the above position on March 11, 1958. (See Employees' Exhibit No. 2.) A junior employee to claimant, Miss Helen G. Conway, filed her bid for the same position as above on March 3, 1958. (See Employees' Exhibit No. 3) and was assigned thereto March 17, 1958. (See Employees' Exhibit No. 4.)

On March 18, 1958 Claimant wrote a letter to Mr. W. A. English, Office Manager Executive Department, who issued the aforesaid Bulletin and inquired as to why a junior employee to her had been assigned to the said position. (See Employees' Exhibit No. 5.) This letter was answered by Mr. English on March 21, 1958, saying that she lacked fitness and ability for the position. (See Employees' Exhibit No. 6.)

"The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis ours.)

Mrs. Simmons is not an employe of the Carrier. Therefore, the Carrier submits that this case must necessarily be dismissed.

If, for any reason inconceivable to the Carrier, your Board should decide to look to the merits of this case, we request you to read our Exhibit B, which is a copy of our letter to the General Chairman of the Brotherhood, giving him a hundred or so good and sufficient reasons why Mrs. Simmons was not promoted before she was fired the last and final time. If this were a claim for reinstatement, we would add to the record a number of things not included in Exhibits A and B. We see no reason to do so here.

The Carrier requests that this case be dismissed, or if for any reason it is not dismissed, it should be denied.

It is affirmed that all data submitted herein has heretofore been made known to the Brotherhood.

(Exhibits not reproduced.)

OPINION OF BOARD: In a fitness and ability case, as we have here, this Board recognizes as a basic principle the prerogative of management to determine the fitness and ability of its employes and, further, we will not set aside the Carrier's decision unless it can be shown that it was arbitrary and capricious. A review of the Record in the matter before us convinces this Board that it is clearly established that the Carrier was justified in refusing to assign to Claimant the position of Mail Clerk for which she applied. The Claim should be disallowed.

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 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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.