

Award No. 11768

Docket No. CL-11716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

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-3 and 2-A-6, when on September 11, 1956, it denied P. C. DeLucia, Clerk, the right to displace a junior employe on Position Symbol B-239, in the Office of the Supervising Operator, Pennsylvania-Station, New York, N. Y., New York Region.

(b) P. C. DeLucia be compensated for all monetary loss sustained beginning September 11, 1956, and until adjusted.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative 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.

Claimant P. C. DeLucia was temporarily assigned to Position Symbol 3715, Baggage Department, Pennsylvania Station, New York, N. Y., as of September 6, 1956. The Claimant has a seniority date on the Seniority Roster of the New York Region in Group 1. On September 7, 1956, the regular incumbent of Position Symbol 3715 returned to this position, thereby displacing the Claimant.

be entirely in keeping with the letter and spirit of the Clerks' Rules Agreement and in no way arbitrary, capricious or discriminatory.

For the reasons herein given, no valid basis exists for a finding that any violation of the Clerks' Rules Agreement occurred in this case and, therefore, your Honorable Board is respectfully requested to deny the Employees' claim in its entirety.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, 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 record of all of the same.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented by this claim is whether Carrier violated the Clerks Rules Agreement when it refused to permit P. C. DeLucia, clerk, to displace a junior employe on Position Symbol B-239, a job which he requested.

The joint statement of the parties set forth these agreed-upon facts. Claimant DeLucia was temporarily assigned to Position Symbol 3715. Mr. DeLucia, rather than return to his former position upon the return of the regularly assigned incumbent, chose to request a position bulletined during his absence on the basis of his seniority rights under the clerical agreement. He was interviewed by the supervising operator to determine his fitness for the position, was told he had never worked this position but that he could post on it. After posting, Carrier gave Claimant an oral examination which he failed to pass. He, therefore, was refused the position.

Claimant bases his grievance on the fact that Carrier erroneously denied him the right to displace the junior employe because he allegedly did not have the proper experience. He quotes the words of Carrier, "The Claimant had never worked this position." Carrier maintains that the only issue involved is whether it, "exercised the managerial prerogative in an unreasonable, arbitrary, capricious and discriminatory manner so as to prejudice the right of the Claimant." On this issue Carrier takes the position that it went beyond the requirements of the rules of the agreement in giving Claimant an opportunity to post on the job before taking an examination. It hence concludes that it did not act in an arbitrary and unfair manner.

We agree that the general principles which Carrier asserts are significant in this dispute. These are that management has the initial responsibility for determining qualifications for particular positions, that management cannot be arbitrary and unreasonable, and that if management decides that the applicant's qualifications are not satisfactory, the employe must show that he is qualified.

In the case at bar, Carrier contends that it followed these principles. It gives as evidence that it applied reasonable and fair personnel practices in that it interviewed the Claimant, gave him an opportunity to post for the position, and then gave him an examination. Close study of Carrier's procedures and of Claimant's background and experience reveals that the methods were not reasonable and objective. Carrier did conform to the letter and form

of the procedure, but not to the intent and spirit. We cannot ignore certain qualifications of the Claimant. For considerable time he had performed for the Carrier time-keeping work, which was the main responsibility of the job which he now requested. The oral examination which Claimant did not pass was unfair to Claimant in the division of questions on the functions he was expected to perform. It was disproportionately weighted with questions involving rates, and Claimant was not given the opportunity to use the rate books in preparation for the examination. Information about rates used in connection with the duties of the position are ordinarily obtained by recourse to the rate books, and skill is obtained by actual experience on the job. Finally, to preclude Claimant from Position Symbol B-239 on the basis of lack of experience was unreasonable in view of his actual experience in earlier related work for Carrier apparently performed with success. Thus, although Carrier asserts that it applied fair procedures for ascertaining qualifications of Claimant, the results of its action was to deny Mr. DeLucia his rights under the Clerks Rules Agreement; and we sustain his claim that he be compensated for monetary loss.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October, 1963.