

Award No. 11941
Docket No. CL-11229

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Lydia F. Ryan, furloughed clerk, for a day's pay at the rate of Vacation Relief Clerk, for each day beginning July 3, 1958, that a junior employe has been used to fill vacation relief positions in the Car Accountant's Office at Kansas City, Missouri.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Ryan entered service of the Carrier as an Apprentice Clerk in the President's Office at Kansas City, Missouri on February 15, 1944. She transferred to the Car Accountant's Office in Kansas City on August 10, 1944, and worked on various positions in that office until April 30, 1958, when she was furloughed account reduction in forces.

In the Car Accountant's Office, she filled the following positions:

August 10, 1944	Apprentice Clerk
October 9, 1944	Junior Clerk
November 1, 1944	Interchange Clerk
January 8, 1945	Record Clerk
October 14, 1946	Office Girl (Force Reduction)
February 12, 1947	Record Clerk
August 22, 1953	Interchange Clerk
November 1, 1953	Report Clerk
November 16, 1953	Interchange Clerk
April 30, 1958	Furloughed account reduction in forces.

Her seniority in the Car Accountant's Office dates from August 10, 1944 in Group 2 and from October 9, 1944, in Group 1, when she was promoted from an Apprentice to a Junior Clerk.

vacation relief job which requires a person of considerable ability. Seniority cannot prevail in such circumstances. The carrier is entitled to use on its jobs employees who have the qualifications to handle such jobs. It should not be required to "carry" an employee whose qualifications are insufficient to handle such jobs.

The claim should be denied and the Board is respectfully requested to so find.

All data contained herein are known or have been made known to representative of claimant by correspondence or in conference as shown in Exhibits "1" to "5", inclusive, attached hereto and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier on June 30, 1958, advertised position of Vacation Relief Clerk. Claimant applied. Her seniority dated from 1944. She was the senior furloughed clerk. The position was assigned to an employee who stood below Claimant on the Seniority Roster.

The pertinent provision of the Agreement reads:

**"PROMOTION, ASSIGNMENT, AND
DISPLACEMENT**

Rule 7 (a). Employees covered by these rules shall be in line for promotion. Promotions, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid on a new position or vacancy where two or more employees have adequate fitness and ability."

Under the above rule the determination as to "fitness and ability" to fill the relief position was within the judgment of Carrier. It found Claimant wanting.

Only if Petitioner proved by a preponderance of the evidence that Carrier exercised its judgment in an unreasonable, arbitrary, capricious or discriminatory manner could we consider whether the Agreement was violated. The burden of proof was Petitioner's. It did not meet it. We will dismiss the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1963.