

Award No. 13084
Docket No. CL-12892

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

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

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5057) that:

(a) The Carrier violated the Agreement when, in the office of Auditor of Receipts, Mobile, Ala. it removed Earlamae P. Gantt from her regularly assigned position of Claim Investigator.

(b) The Carrier shall now be required to restore Earlamae P. Gantt to the position of Claim Investigator and compensate her for all salary loss sustained by reason of having removed her from the position retroactive to November 8, 1960 and for each work day thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS:

1. Claimant Earlamae P. Gantt has been in the service of the Carrier for approximately forty-two years, the last twelve of which were on the position of Claim Investigator, Accounting Department. In October 1959 two of the six remaining Claim Investigator positions were abolished and the work load reassigned so as to place on Claimant Gantt's position work not theretofore assigned to her position, and the details of which were not familiar to her. The newly assigned work was that of handling overcharge claims, i.e., claims made by consignors or consignees directly to the Carrier alleging that overcharges had been assessed on a particular shipment or shipments and requesting the refund of such overcharges. The type of claim previously assigned to Claimant was that filed by the patron with another carrier which had jointly carried property with respondent, approved and paid by such other carrier, and respondent "debited" or charged a proportionate part of the overcharge thus paid, based upon the agreed proportion of freight revenue accruing to respondent. Claimant Gantt had also worked "transit" claims, which are claims for adjustments on traffic milled in transitu, the freight charges being originally assessed on the basis of the rate from origin to transit point plus the rate from the transit point to the final destination, and which charges are adjusted to reflect the through rate from origin to destination.

of some express provision of the current agreement. This is a case where an employe was displaced from her position on grounds of having failed to perform its duties in a reasonably efficient manner. Rule 5 of the Agreement has application after an employe has qualified. Under its terms an employe can be displaced, after qualifying, for failure to show fitness and ability to fill or continue to fill the position to which she has been assigned. Mrs. Gantt asked for and was given a hearing in conformity with Rule 28. We find nothing in the record to warrant us in holding Mrs. Gantt was removed from her position as Claim Investigator in violation of the Agreement. Therefore, the claim cannot be sustained in any particular.

* * * * *

In summary, Carrier has shown that:

- (1) The evidence clearly indicates Claimant's inefficiency and incompetency to fulfill the duties of the position from which she was displaced;
- (2) The employer must be the judge of the fitness and ability of an employe, and there is nothing in the rules of the parties' agreement abrogating it;
- (3) The action of the Carrier was not unreasonable, arbitrary or capricious;
- (4) Repeated decisions of this Division of the Board have established the rule that once fitness and ability of an employe have been found by the Carrier to be lacking, the burden rests upon the claimant to overcome that decision by substantial and competent proof; and
- (5) Claimant has failed to meet that burden.

The claim is devoid of merit, and should be denied.

OPINION OF BOARD: The employees have not met their burden to show that the Carrier's disqualification of Claimant Gantt from her position of Claim Investigator was arbitrary and capricious and an abuse of discretion, as charged. Claim must, therefore, be denied.

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 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 23rd day of November 1964.