

Award No. 13471
Docket No. CL-14309

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (Gt5383) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-3(b), when it improperly **disqualified** Clerk Edward Ross from a regular position of Relief **Clerk** at the TNC Train Office, Rose Lake Yard, East St. Louis, Illinois, Southwestern Region, effective September 26, 1961.

(b) Claimant **Ross** and **all** others affected, should **be** reimbursed for **all** monetary loss sustained, **commencing** September 26, 1961 and continuing until the violation is corrected. (Docket 1275)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the **class** or craft of employees 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** Storhouse **Employees** 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.

A position of Belief Clerk, **no** symbol number, located at the True-Train Office, Rose **Lake** Yard, East St. Louis, Illinois, was advertised in Group 1 Bulletin No. 44, dated September 6, 1961. On September 20, 1961, the position was awarded to Claimant Edward Ross, effective September **19, 1961**. Mr. ROSS has seniority dates of March 11, **1943** in Group **1**, and August **20**, 1936 in Group **2** on the seniority rosters of the Southwestern Region.

Claimant Rose worked the position of Belief **Clerk** Tuesday, September **19**, through Saturday, September 23, 1961. By letter dated September 23, 1961, True-Train Supervisor R. L. Stoops notified Mr. Ross as follows:

mine whether unnamed **claimants** have complied with these agreed-upon safeguards against untimely or improper claims. Thus, in the event your Honorable Board were to sustain a claim in behalf of unnamed **employees** in these circumstances, it would be exceeding its statutory authority to handle only such claims that have been properly handled on the property in accordance with the applicable rules governing the usual method of handling **claims** and grievances.

The Carrier **respectfully** submits that your Honorable Board should not render an **award** in favor of any unnamed employee or employees without knowing whether or not its action in such a matter would constitute an illegal act. See Third Division Award 2126 and First Division Award 12668 in this regard.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is **Required** To Give Effect To The Said **Agreement** And To **Decide** The **Present** Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, **First**, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, **rules** and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The **Employees** have not **established** that Claimant was qualified to perform the duties of Relief Clerk at **the Truc** Train Terminal or that the Carrier's action in **disqualifying** him for work on said position was in violation of the Clerks' Rules Agreement or in any way arbitrary, **discriminatory** or **capricious**. On the other hand, the Carrier has shown that its actions, which **form** the basis of this claim, were in conformity with the applicable provisions of the Agreement and entirely proper. Therefore, no valid basis exists upon which **your** Honorable Board could sustain the Employees' claim in this case, and it is respectfully urged to deny the claim in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: On September 19, 1961, the Claimant was awarded the bulletined position of Relief Clerk at the **Truc** Train Office, Rose Lake Yard, East St. Louis, Illinois, by a proper exercise of his seniority rights. He worked in this position until September 23, 1961, at which time he was disqualified by Management. It is this action which constitutes the subject matter of this dispute.

The Claimant has a long record of apparently satisfactory service to the Carrier extending over a period in excess of twenty-five years. On the day

upon which the **disqualification** occurred, the evidence presented reveals that the Claimant in the performance of his duties was unable to maintain a satisfactory pace in his billing work. He was behind to the extent that the Management called another **employee** into the office to aid and assist the Claimant. There is also evidence of errors having been made by Claimant on certain waybills, as well as his inability to operate certain mechanical office **machines**, an integral part of the job. We are accordingly asked to decide whether the Management's action in this case was arbitrary and capricious and as such violative of the contract.

By awarding this position to the **Claimant**, Carrier has implicitly recognized his fitness and ability. However fitness and ability are not tantamount to qualification, which Carrier has **the** right to determine within a period of thirty days. Carrier's decision is final, binding, conclusive and unless it is evident that its' action is totally unreasonable, arbitrary and capricious, this Board has no authority to overrule it. The Claimant in this case worked 4 full days on this new position and was declared disqualified on the 5th day. The Carrier, as was stated previously, has 30 days within which to make a decision; depending on the **facts** in a given case, the arbitrary and capricious concept is counter balanced by the reasonable concept. It is quite **conceivable** that in a particular situation, one day might be considered reasonable, whereas in another it might be 5 or 15 days. From a consideration of the facts in this case, it is our judgement that Carrier has been reasonable in the handling of this case. The Organization has failed in its' burden of proof to convince us that Carrier's action was arbitrary and capricious. We **will** deny **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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. IX **Schulty**
Executive Secretary

Dated at Chicago, Illinois, **this** 15th day of April 1965.

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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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John J. McGovern, **Referee**

PARTIES TO DISPUTE:

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THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5383) that:

(a) **The** Carrier violated the Rules **Agreement**, effective May 1, 1942, except as amended, particularly **Rule 2-A-3(b)**, when it improperly disqualified **Clerk** Edward Rosa from **a** regular position of Relief Clerk at the **Truc** Train Office, Rose Lake Yard, East St. Louis, Illinois, Southwestern Region, effective September 26, 1961.

(b) **Claimant** Ross and **all** others affected, should be reimbursed for **all** monetary loss sustained, commencing September 26, 1961 and continuing **until** the violation is corrected. (Docket 12'75)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station **Employees** as the **reoresentative** of the class or craft of **employees** in **which** the **Claimant** in this c&e held a position and the **Pennsylvania Rail-** road Company-hereinafter referred to as **the** Brotherhood and the Carrier, **respectively**.

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A position **of** Relief Clerk, **no** symbol number, located at the **Truc-Train** Office, Rose Lake Yard, East St., **Louis**, Illinois, was advertised in Group 1 Bulletin No. 44, dated September 6, 1961. On **September** 20, 1961, **the** position was awarded to **Claimant** Edward Ross, effective September 19, 1961. Mr. Ross has seniority dates of March 11, 1943 in Group **1**, and August 20, **1936** in Group 2 on the seniority rosters of the Southwestern Region.

Claimant Ross worked **the** position of Relief **Clerk** Tuesday, September 19, through Saturday, September 23, 1961. By letter dated September 23, 1961, **Truc-Train** Supervisor R. L. Stoops notified Mr. **Ross** **as** follows:

mine whether unnamed claimants have complied with these agreed-upon safeguards against untimely or improper claims. Thus, in the event your Honorable Board were to sustain a claim in behalf of unnamed employees in these circumstances, it would be exceeding its statutory authority to handle only such claims that have been properly handled on the property in accordance with the applicable rules governing the usual method of handling claims and grievances.

The Carrier respectfully submits that your Honorable Board should not render an award in favor of any unnamed employee or employees without knowing whether or not its action in such a matter would constitute an illegal act. See Third Division Award 2126 and First Division Award 12668 in this regard.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Employees have not established that Claimant was qualified to perform the duties of Relief Clerk at the Truc Train Terminal or that the Carrier's action in disqualifying him for work on said position was in violation of the Clerks' Rules Agreement or in any way arbitrary, discriminatory or capricious. On the other hand, the Carrier has shown that its actions, which form the basis of this claim, were in conformity with the applicable provisions of the Agreement and entirely proper. Therefore, no valid basis exists upon which your Honorable Board could sustain the Employee's claim in this case, and it is respectfully urged to deny the claim in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: On September 19, 1961, the Claimant was awarded the bulletined position of Relief Clerk at the Truc Train Office, Rose Lake Yard, East St. Louis, Illinois, by a proper exercise of his seniority rights. He worked in this position until September 23, 1961, at which time he was disqualified by Management. It is this action which constitutes the subject matter of this dispute.

The Claimant has a long record of apparently satisfactory service to the Carrier extending over a period in excess of twenty-five years. On the day

upon which the **disqualification** occurred, the evidence presented reveals **that** the **Claimant** in the performance of his duties was unable to maintain a satisfactory pace in his billing work. He was behind to the extent that **the** Management called another **employee** into the office to aid and assist the Claimant. There is **also** evidence of errors having been made by Claimant on certain waybills, as well as his inability **to** operate certain mechanical office **machines**, an integral part of the job. We are accordingly asked to decide whether the Management's action in this case was arbitrary and capricious and as such violative of the contract.

By awarding this position to the Claimant, Carrier has implicitly recognized his fitness and ability. However fitness and ability are not tantamount to qualification, which Carrier has the right to determine within a period of thirty days. Carrier's decision is final, binding, conclusive and unless it is evident that its' action is totally unreasonable, arbitrary and capricious, this Board has no authority to overrule it. The **Claimant** in this case worked 4 full days on this new position and was declared disqualified on the 6th day. The Carrier, as was stated previously, has 30 days within which to make a decision; depending on the facts in a given case, the arbitrary and capricious concept is counter balanced by the reasonable concept. It is quite conceivable that in a particular situation, one day might be considered reasonable, whereas in **another** it might be 5 or 16 days. From a consideration of the facts **in** this case, it is our judgement that Carrier has been reasonable in **the** handling of this case. The Organization has failed in its' burden of proof to convince us that Carriers action was arbitrary and capricious. We will deny 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 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 **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** 16th day of April 1965.