

Award No. 13616
Docket No. CL-13877

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5309) that:

The Carrier violated the provisions of Clerks' Agreement at Jersey City, N. J. when on June 23, 1962, Carrier refused to allow a senior employe to displace a junior employe at Dock 8, Marine Dept., Jersey City, N. J., and

That Carrier shall now permit Mr. A. J. Kennedy, seniority date, September 6, 1939, to displace Mr. P. Cannariato, seniority date March 14, 1945, and

That Mr. A. J. Kennedy be reimbursed for any and all wage loss sustained as a result of Carrier's failure to permit him to displace the junior employe. (Claim No. 1373.)

EMPLOYEES' STATEMENT OF FACTS: As a result of the merger of the former Erie Railroad and former DL&W Railroad pursuant to the terms of an Implementing Agreement, the Boat Dispatcher's Office at Dock 8, Jersey City, N. J. were merged and the forces combined. The positions in the merged unit were bulletined, Employees' Exhibit A, on June 26, 1961. Award bulletin, Employees' Exhibit B was issued on July 8, 1961. Position of Assistant Boat Dispatcher, Marine Dept., assigned to P. Cannariato, was bulletined, awarded and assigned as a fully-covered position. There are no X-2 designations on this position. On June 19, 1962, Mr. A. J. Kennedy, holding position of Assistant Boat Dispatcher, Marine, exercised displacement due to his position being abolished, Employees' Exhibit C. Mr. Kennedy notified the Superintendent that he was displacing junior employe P. Cannariato, Assistant Boat Dispatcher, Employees' Exhibit D. Mr. Kennedy was denied the displacement verbally on June 21, 1962, confirmed by letter dated June 27, 1962, Employees' Exhibit E. As a result, Mr. Kennedy displaced onto a claim clerk's position under protest which position he occupies as of this writing. Claim was progressed through the usual channels up to and including the highest officer designated for handling employe matters, Employees' Exhibit F. Claim was

OPINION OF BOARD: The issue in this dispute concerns two rules of the Agreement.

"RULE 6. PROMOTIONS

(a) Employees covered by these rules shall be in line for promotion. Promotion under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

"RULE 8. FAILURE TO QUALIFY

(a) An employee, when awarded a bulletined position or exercising displacement rights, shall be given a reasonable time in which to qualify (not less than thirty days) and, failing, shall retain full seniority rights, may bid on any bulletined position, but may only displace the junior regularly assigned employee, for whose position he is qualified in the seniority district where he holds seniority, except that an employee failing to qualify on a temporary vacancy bulletined as such will be governed by Rule 13."

The decisions of this Board are in conflict. Award 13196 with similar rules held that the Carrier's right to determine the fitness and ability of an employee was fettered by the second rule. Award 10689 also with similar rules held that the Carrier had the right to make a judgment of an employee's fitness and ability beforehand and was required to give a 30-day trial if the employee was not qualified for the position.

We concur with the logic and holding of Award 10689. Rule 6(a) clearly states that seniority prevails if fitness and ability are sufficient. It follows, therefore, that if an employee does not possess the fitness and ability, seniority does not prevail. The Carrier is not then required to assign the position to a senior employee who does not possess the fitness and ability required for the position. It would follow, therefore, that Rule 8(a) would not be considered, for the first words of the rule state: "an employee, when awarded a bulletined position . . .". Obviously, this rule does not come into play until an employee has been awarded a position.

We believe that Rule 8(a) was agreed upon in instances where the Carrier was in doubt of the ability and fitness of an employee to perform the duties of a position.

There is ample evidence in the record to determine that the Carrier was justified in determining that the Claimant was not qualified to perform the duties of the position he was attempting to displace.

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 26th day of May 1965.