

Award No. 13702

Docket No. CL-14424

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Peyton M. Williams, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5439) that:

1. Carrier violated the Clerks' Rules Agreement at Seattle, Washington, when it failed to call the senior available employe for overtime work.

2. Carrier shall now be required to compensate Employe S. R. Howes for eight (8) hours at the overtime rate of Assistant Chief Yard Clerk Position No. 6659 for July 28, 1962.

EMPLOYEES' STATEMENT OF FACTS: Employe S. R. Howes, who has a seniority date of April 27, 1948 in Seniority District No. 45, is the regularly assigned occupant of a Relief Position identified as Swing Position No. 1 at Seattle, Washington. Swing Position No. 1 relieves the following positions:

Asst. Chief Yard Clerk	Pos. No. 6661	7 AM to 3:30 PM	Sunday
Interchange Clerk	Pos. No. 6670	3 PM to 11 PM	Mon. & Tues.
Interchange Clerk	Pos. No. 6671	11 PM to 7 AM	Wed. & Thurs.

The duties of Assistant Chief Yard Clerk Position No. 6671 as assigned by bulletin are:

"Supervise Yard Clerk work, also keypunching of train lists, waybills, etc. Must be able to drive automobile and be properly licensed."

The duties of both Interchange Clerk Positions No. 6670 and No. 6671 as assigned by bulletin are:

"General yard clerk work and other duties as assigned."

Employe Howes was assigned to Swing Position No. 1 on July 3, 1961 and has occupied that position since that time. For several years prior to

motion is the Carriers: and we should not substitute our judgment based on paper for the Carrier's first hand judgment, except upon a showing of abuse of discretion (Award 5292) bad faith, capriciousness, bias or partiality: the burden rests upon Claimant to overcome that decision by substantial and competent proof." (Emphasis ours.)

THIRD DIVISION AWARD NO. 10601

" * * * They have not, however, presented proof of that fact, nor have they met the burden of proof requirements. Mere assertions by the Claimants' Representatives can not be accepted as proof. See Awards 8065 (McCoy), 6359 (McMahon), 9932 (Weston), 9788 (Fleming), 9674 (Johnson), and 9609 (Rose). In Award 9674 this Board said that 'self-serving declarations and general statements (are) of no real probative value.' " (Emphasis ours.)

THIRD DIVISION AWARD NO. 11231

" * * * The burden of proof is on the Claimants, they have failed to support their claim by a preponderance of the evidence. Mere assertions that the work involved is theirs, did not reach the requirements of proof. See our Award 11118 involving the same property." (Emphasis ours.)

It was and is the judgment of the Carrier Officers concerned that Claimant Howes did not possess sufficient fitness and ability to properly discharge the important assigned duties of Position No. 6659.

The employees would suffer no loss if Position No. 6659 were to be filled with an employee lacking the necessary fitness and ability, but the Carrier would, as pointed out previously, suffer tremendously. The Carrier submits that there is nothing in the schedule rules which requires the Carrier to set aside the considered judgment of its officers and accept instead the contentions of its employees.

The Carrier's actions in this matter have been entirely fair. The Carrier has the right, in fact the obligation, to see that positions are filled with employees who possess sufficient fitness and ability. We maintain that it is the judgment of the Carrier Officers that Claimant Howes did not possess sufficient fitness and ability to properly discharge the assigned duties of Position No. 6659 and the Carrier's judgment in that regard should not be set aside, nor would there be any basis for doing so under the schedule rule of the parties here in dispute.

(Exhibits not reproduced).

There is absolutely no basis for the instant claim and the Carrier respectfully requests that the claim be denied.

OPINION OF BOARD: When Assistant Chief Yard Clerk Position No. 6659 was temporarily vacant Carrier called a qualified man, who was junior in seniority to Claimant herein, to fill the position. Claimant states that as the senior man he should have been called and points out that he has served as a relief man for an extended period of time in a job classification with duties bulletined as being the same type or kind as the duties regularly assigned to Position No. 6659. Claimant asks that we require Carrier to com-

pensate him, at the overtime rate, for the eight hours work for which he failed to receive a call.

In the course of processing this claim on the property carrier's explanation of its calling the junior man rested chiefly in advising Petitioner that Claimant did not possess sufficient fitness and ability to do the work required in Position No. 6659 and its stating that Claimant had insufficient experience for the job.

The record discloses that Position No. 6659 required, among other duties, that the occupant make extensive use of an IBM keypunch machine. We were also advised that Claimant's duties as relief man in Position No. 6661, the position having identical bulletined duties as Position No. 6659, did not require that he operate an IBM keypunch machine. Additionally, there is evidence submitted that Claimant was given a short test on an IBM keypunch machine, the results of which tended to show that Claimant was not a proficient keypunch operator.

There is no evidence presented to us which tends to be a refutation by Claimant of Carrier's determination of his abilities. He does not state that he can, or normally does, proficiently operate an IBM keypunch machine; neither does he, or Petitioner, charge that Carrier denied him a "reasonable opportunity to learn the operation of such machine without loss of time" as is required by Rule No. 56 of the applicable agreement between the parties.

In the absence of rebuttal evidence, which would tend to offset Carrier's proof of its charge that Claimant did not possess the fitness or ability to work Position No. 6659, we cannot find that Carrier's decision to call a junior qualified man was so erroneous that we should now overturn its judgment, substitute ours, and grant Claimant's request.

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 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 30th day of June 1965.