

Award No. 13929
Docket No. CL-14477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5423) that:

(a) Carrier violated the Clerks' Agreement in the Local Freight Office at Memphis, Tennessee, when on February 3, 1961, it assigned Mrs. F. R. Thomason, whose seniority date is September 19, 1952, to Position No. 438 (Billing-Expense Clerk) and refused to assign P. L. Overall, Jr., whose seniority date is March 4, 1952, to the position in question, in violation of Mr. Overall's seniority rights, and

(b) That P. L. Overall, Jr., shall now be assigned to Position No. 438 (Billing-Expense Clerk) and that Claimant P. L. Overall, Jr., be paid \$22.49 per day (which is the rate of pay attaching to Position No. 438) which is in addition to any compensation earned by him on any other position, effective February 6, 1961, and forward to the date this unsettled dispute is satisfactorily resolved.

EMPLOYEES' STATEMENT OF FACTS: There is employed at the Memphis, Tennessee, Freight Station, a force of clerical employees who perform the clerical and related work in connection with the operation of the Freight Station coming within the scope rule of our Agreement with the Carrier governing the working conditions of the employees effective June 23, 1922, revised February 1, 1954.

Both Mrs. F. R. Thomason and Mr. P. L. Overall, Jr., had, prior to the date of the instant claim, been displaced from their positions by the operation of Rule 18 and having had sufficient seniority to displace on another position, elected to exercise their rights under Items (b) and (c) of Section 1 of the Interpretation to Rule 18, effective July 1, 1942. Therefore, they were required to perform extra work in accordance with their request until such time as they became entitled by their seniority to a new position or vacancy considered as permanent or of substantial duration which they were qualified to fill as provided for in Section 6 of the Interpretation to Rule 18.

4. The claimant has been shown to have been lacking in sufficient fitness and ability at the time position No. 438 was vacant and no evidence has been brought forward on the property to show the company's findings incorrect, capricious, or in abuse of its discretion, and, therefore, there is no reason for the Board to set aside or reverse the decision made by the company.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the terms of paragraph 6 of the Interpretation to Rule 18, on February 3, 1961, Carrier assigned Mrs. F. R. Thomason to Position No. 438, and did not assign Claimant to that position, even though he was more senior than Mrs. Thomason; Carrier gave as the reason that, in its judgment, Claimant was not, and Mrs. Thomason was, qualified to fill the position. Brotherhood argues that Claimant's experience, training and work history with Carrier prove that he was qualified, Carrier was aware and in fact conceded, in connection with another position, that he was qualified, and that Carrier action in determining that Claimant was not qualified for this position was an arbitrary and capricious exercise of its managerial prerogatives. Paragraph 6 of the Interpretation to Rule 18 reads:

"(6) An employe who has elected to exercise his rights to options (b) and (c) of paragraph (1) of this interpretation, who subsequently becomes entitled by his seniority to a new position or vacancy considered as permanent or of substantial duration that he is qualified to fill, shall be notified to return to service in accordance with the provisions of Rule 18 with copy of such notification furnished the Division Chairman. In the event employe does not return to service within seven (7) days, he will be considered out of service unless granted leave of absence in accordance with the provisions of Rule 27."

There is no argument in this case that Carrier did not have the right to determine Claimant's qualifications for the position involved — the case centers on the charge by Brotherhood that Carrier's finding that Claimant was not adequately proficient as a typist to qualify for the position was arbitrary and capricious and contrary to facts of which Carrier was aware.

Carrier argues that it gave consideration to Claimant's record and determined from it that, while he was adequately proficient as a typist to qualify for Position No. 193, he was not proficient enough to qualify for Position No. 438. The record includes information showing that the typing requirements of the two positions were not the same; on the face of it, then, it would be neither arbitrary nor capricious for Carrier to determine that each position required different kinds and/or levels of proficiency as a typist. Brotherhood has introduced no evidence successfully to rebut this argument of Carrier. Nor can evidence be found in the record that Carrier's judgment of Claimant's qualifications for either position was arrived at without basis in fact and reason. It is possible that we might reasonably have arrived at a different judgment based on the same facts, but it is Carrier's right, not ours, to make the effective judgment so long as it does not abuse its discretion by making unreasonable, biased or arbitrary or capricious determinations. Carrier's letter of July 13, 1961 (Brotherhood's Exhibit No. 11) and Carrier's letter of August 30, 1961, (Brotherhood's Exhibit No. 13), spell out the facts and reasoning on the basis of which, absent contrary evidence, it must be found that Carrier's judgment of Claimant's qualifications was not an abuse of its discretion. No such evidence is in the record, and 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. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1965.