

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 (GL-5578) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-2(a), when it assigned an employe who was junior to Claimant Mary M. Kerr to a bulletined position of Telephone Switchboard Operator located in the Telephone Exchange Office, Pennsylvania Station, Pittsburgh, Pennsylvania, Pittsburgh Region.

(b) Mary M. Kerr should be allowed eight hours' pay a day for June 22, 1961 and all subsequent dates until the violation is corrected. (Docket 1348.)

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

For approximately eighteen years prior to June 22, 1961, Miss Mary M. Kerr was the incumbent of regular positions of Telephone Switchboard Operator at various locations including Steubenville, Ohio and Conway Yard, Pa. She has a seniority date of January 14, 1943, on the seniority roster of the Pittsburgh Region in Group 2.

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"We cannot find any support that this work is exclusively the work of the Organization. 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 also Third Division Award 11118.

The Carrier has shown that the evidence of record in this case is more than enough to sustain its determination that Claimant did not possess the necessary fitness and ability to perform the work of a Switchboard Operator at the Pittsburgh Telephone Exchange, and that she properly was not awarded such position in conformity with the applicable rules of the Clerks' Agreement. It also has shown that the Employees have failed to submit the necessary proof to overcome the Carrier's determination regarding Claimant's lack of qualifications or to show that its action in refusing to award the position was in any way malicious or discriminatory. Therefore, the Carrier's decision in the matter must be final (Award 6178), and it is respectfully submitted that your Honorable Board cannot properly substitute its judgment for that of the Carrier or otherwise disturb the action taken.

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 Carrier has shown that the Claimant lacked the fitness and ability necessary under Rule 2-A-2(a), to perform the duties of the position she sought; therefore, she properly was passed around without violating the provisions of Rule 2-A-2(a). Accordingly the Carrier respectfully requests your Honorable Board to deny the claim of the Employees in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 13, 1961, a permanent position of telephone switchboard operator at Pennsylvania Station in Pittsburgh was bulle-

tined. Claimant filed a bid. An employe, junior to Claimant, was given the assignment. Claimant charges violation of her seniority rights.

The pertinent rule of the Agreement is:

"2-A-2. (a) In the assignment of employes to positions subject to the application of the provisions of Rules 2-A-1 and 3-C-1, fitness and ability being sufficient, seniority shall govern."

Carrier, in the exercise of its management prerogative, concluded that Claimant was not possessed of the "fitness and ability" which the functions of the bulletined position required.

From our study of the record, we are of the opinion that the following holdings in Award No. 12994, are equally applicable to and decisive of the issue in the instant case:

"Whether an employe possesses sufficient fitness and ability for a position within the meaning of the rules is a matter exclusively for the Carrier to determine and such a determination once made will be sustained unless it appears that the action was capricious and arbitrary. See Award 3273, Carter; Award 10000, Webster; Award 10689, Mitchell; Award 11572, Hall; Award 12433, Seff.

We cannot substitute our judgment for that of Carrier's. Our function is limited to a review of the Carrier's decision to ascertain whether it was made in good faith upon sufficient supporting evidence. Here the Carrier determined that Claimant lacked the qualifications to satisfactorily perform the work involved. Petitioner has not proven that Claimant possessed the necessary knowledge and qualifications as to permit seniority to prevail nor has Petitioner established that the action of the Carrier was arbitrary, capricious or designed to circumvent the Agreement."

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 Employes involved in this dispute are respectively Carrier and Employes 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 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 10th day of December 1965.