

Award No. 14765
Docket No. TE-12891

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southern Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when it failed and refuses to assign Mary Bremer, senior qualified applicant on Advertisement N-3 of March 3, 1960, to the position of third trick Telegrapher-Clerk at Jonesboro, Arkansas.

2. Carrier shall compensate Mary Bremer in accordance with Article 16 of the Agreement commencing March 17, 1960 and continuing thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1934, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Article 13-1 of the Agreement reads as follows:

"ARTICLE 13

Advertising Permanent New Positions or Permanent Vacancies

13-1. Except as per Article 13-2 permanent vacancies and permanent additional positions shall be bulletined to all employes on the division; bulletin to show location, position, hours of service and rate of pay and the senior employee covered by this agreement making written application within ten (10) days from date of bulletin, if competent, shall be assigned. The successful applicant shall be notified of his assignment within twenty (20) days from date of bulletin. If transfer is not made within thirty (30) days from date of bulletin the employee shall be paid not less than assigned daily earnings of position awarded, penalty beginning after expiration of thirty (30) days from date of bulletin. Assignments shall be posted promptly by bulletin for information of all employes on the division. An agent at a

the offer and advising the matter would be appealed.

Exhibits 1 to 31, inclusive, are attached hereto and made a part hereof.

The applicable schedule agreement is that with The Order of Railroad Telegraphers effective December 1, 1934, as amended by Supplemental Agreement effective September 1, 1949, copy of which is on file with the Board.

(Exhibits not Reproduced.)

OPINION OF BOARD: This is a so-called "fitness and ability" case, where Carrier determined that the Claimant lacked the ability and qualifications for the position she sought.

In cases of this kind, and involving similar rules, this Board has consistently held it to be the prerogative of the Carrier to determine the ability and qualifications of applicants for positions and that the Board will not disturb the Carrier's determination unless it be shown that Carrier's action was an abuse of discretion.

The evidence of test results given Mary Bremer appearing in Carrier's rebuttal were not considered in arriving at our decision.

Because it was not considered and could not be considered on the property.

From a review of the record in this case, we do not find that the Employees have proved that Carrier abused its discretion.

The Employees also contend that Carrier was obligated to assign Claimant the position subject to possible later disqualification.

We do not find that the agreement supports such a contention.

Where Carrier initially determines an employee to be lacking in ability and qualifications for a position, it is not obligated to nevertheless assign the employee to the position.

Based on record in this case the Carrier did not violate the Agreement.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1966.

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