

Award No. 15784
Docket No. CL-16088

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5893) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it refused to assign Mr. L. D. Camp, Computing Equipment Operator, to the position of Computer Operator, in the office of Manager, Computer Operations, assigning instead a junior employe, Mr. R. W. Woodward.

(b) Mr. Camp shall now be compensated \$2.00 per day, the difference between his rate of \$22.50 per day and the rate of the Computer Operator position of \$24.50 per day, and continuing until he is assigned to the position of Computer Operator.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimant in this case held position and the Southern Railway Company.

Both Mr. Camp and Mr. Woodward are carried on Seniority Roster B, office Vice President-Staff, Atlanta, Georgia; Mr. Camp has a seniority date of March 1, 1963; Mr. Woodward has a seniority date of July 16, 1963, Mr. Camp being the senior employe.

On July 22, 1964, a position of Computer Operator was advertised by Vacancy Bulletin No. 5, issued by Mr. J. F. Fraher, Manager, Computer Operations, Atlanta, Georgia. (Employees' Exhibit I.) Bids were tendered by Mr. L. D. Camp and Mr. R. W. Woodward, Mr. Camp being senior. Effective July 27, 1964, by Assignment Bulletin No. 5 "B", Mr. Woodward was assigned to the position, the Carrier contending that Mr. Woodward was most qualified. Memorandum Agreements were signed in November, 1956, setting up the Computer Center and providing for special training, schooling and auxiliary instructions in the IBM-705 electronic computer and equipment operations.

The following Memorandum of Understanding was entered into by Carrier and its employees represented by the BofRC on July 25, 1957:

"WHEREAS, Rules 9 and 14 of the Clerks' Agreement do not specify the amount of advance notice to be afforded employees affected when consolidations or transfers of positions from one clerical seniority district to another are to be made, and

WHEREAS, the parties agreed that advance notice is desirable in such cases,

NOW, THEREFORE, UNDERSTOOD AND AGREED THAT:

In the application of existing Rules 9 and 14 of the effective Clerks' Agreement, when consolidations or divisions of offices or departments, or transfers of positions from one seniority district to another are to be made, as much advance notice as possible, but not less than sixty calendar days, in writing will be afforded to affected employees of the intended consolidation, division, or transfer. It is agreed that the position of such notice in the offices or districts affected, with copy to the General Chairman, will constitute compliance with this understanding.

The provisions of this Memorandum shall become effective August 15, 1957, and shall not apply to any consolidations or transfers originating prior to that date."

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier by its Vacancy Bulletin advertised a position of Computer Operator, in response to which two employees, Claimant with a seniority date of March 1, 1963 and Woodward with a seniority date of July 16, 1963, applied. The Carrier assigned junior employee Woodward to the position in question.

Petitioner relies on Rule 16 of the Agreement for this claim. That Rule is quoted below:

"RULE 16.

FILLING VACANCIES UNDER SENIORITY RULES

(a) (Revised, effective October 1, 1938.) Except as otherwise provided in this agreement, Rules 7, 8, 9, 13, 14, 15 and 17 in particular, vacancies covered by this agreement will be filled in accordance with principles defined in Rule 15 (exclusive of the notes) in the following manner, except that merit, capacity and qualifications being sufficient, seniority shall govern:

* * * * *

NOTE No. 1: The word 'sufficient' as used above is intended to establish the right of the senior qualified employees to be assigned to new positions or vacancies covered by section (a) of this Rule 16 over junior qualified employees."

The Petitioner contends that in order to comply with the provisions of this Rule, it is enough to establish the fact that the senior applicant has sufficient fitness and ability to be able to perform the work within a reasonable time.

The Carrier argues that the primary rule to be considered is Rule 15, since its provisions are incorporated by reference into Rule 16 and the 1956 Memorandum Agreement. Rule 15 reads as follows:

"RULE 15.
PROMOTION, VACANCIES OR NEW POSITIONS NOT FILLED
BY SENIORITY
(Revised, effective October 1, 1938)

Promotions, vacancies or new positions (either excepted or schedule) which are not filled by seniority shall be filled as follows:

Qualifications, merit and capacity being equal, preference shall be given employes in the service in order of their service age, the appointing officer to be the judge, subject to appeal to the highest officer designated by the Carrier to whom appeals may be made, whose decision shall be final."

The Carrier contends that in compliance with Rule 15, when qualifications, merit and capacity of the applicants are equal, "then, and only then, will the employes with the greatest seniority be given priority in assignment." Carrier further contends that Claimant's qualifications, etc., never were equal to Woodward's; hence, it was justified in appointing the junior applicant to the position in question.

The evidence of record shows that the Carrier simply did not consider the Claimant to be qualified for the position, and since his qualifications were not equal to Woodward's, the right to assignment by preference based on seniority never matured. Under the rules, seniority alone is not the test to be applied; qualifications, merit and capacity must be established first. The burden of proof in this regard is the Claimant's. Other than the fact that he has worked 1½ years approximately as a Computing Equipment Operator, we can find no substantive evidence relative to his qualifications in this record. Further, the Claimant's application was given consideration by the Carrier, a final determination having been made that he was not qualified. This decision is final under Rule 15 (see Awards 15387-Dorsey, and 12433-Seff). Additionally, there is no evidence that the Carrier acted in an arbitrary, capricious and unreasonable manner. The converse of this is true. We will accordingly deny the claim.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 28th day of July 1967.

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