

Award No. 16360
Docket No. CL-16742

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6102) that:

(a) Carrier violated the Clerks' Agreement at its 63rd Street Accounting Office, Chicago, Illinois, when on April 29, 1963, it awarded a bulletined position to a junior employe, E. S. Jablonski, to the exclusion of senior employes P. M. O'Brien, W. W. Hart and J. W. Bogovich, who made bids on the position in accordance with the Agreement.

(b) Clerk P. M. O'Brien be compensated 22 cents per day for April 29, 1963, and each subsequent workday.

(c) Clerk W. W. Hart be compensated 71 cents per day for April 29, 1963, and each subsequent workday.

(d) Clerk J. N. Bogovich be compensated 71 cents per day for April 29, 1963, and each subsequent workday.

EMPLOYEES' STATEMENT OF FACTS: On April 25, 1963, Bulletin No. 23, advertising vacancy on Position No. 35, Accountant, daily rate \$23.56, was issued by the Accounting Department. There were four applicants for the position and in seniority order they were as follows:

P. M. O'Brien	Rank No. 117	Seniority - March 28, 1951
W. W. Hart	Rank No. 140	Seniority - April 28, 1953
J. N. Bogovich	Rank No. 153	Seniority - June 17, 1958
E. S. Jablonski	Rank No. 160	Seniority - March 2, 1959

On April 29, 1963, Position No. 35 was awarded to junior employe E. S. Jablonski, and by virtue thereof Rule 6, among others, of the current Agreement were violated.

Claim was filed with Auditor of Disbursements, S. G. Bucher, on June 20, 1963. See Employees' Exhibit Nos. 1-A and 1-B. August 12, 1963, claim was appealed to General Auditor, G. M. Craig. See Employees' Exhibit Nos. 2-A

On the merits, the issue is whether the company violated Rule 6 of the agreement in awarding a bulletined position to an employee other than the senior applicant. The company will show that it did not violate the rule. Specifically, the company will show:

- (1) that Rule 6 provides that the senior applicant with sufficient fitness and ability is entitled to a bulletined position,
- (2) that the duties of Position No. 35, the one in this dispute, required certain standards of fitness and ability for that job,
- (3) that none of the claimants met the standards to be considered as possessing sufficient fitness and ability for Position No. 35, and
- (4) that even if there had been a violation, the claim is nothing more than a request for a penalty, which the Board has no right to grant.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose in connection with the filling in April, 1963, of Position No. 35 in the Car Repair Bureau in the office of the Auditor of Disbursements, which position became vacant as result of retirement of the incumbent.

The vacant position was bulletined in accordance with the rules of the Agreement. The duties of the position are outlined in the record. They included the auditing of AAR foreign car repair bills received for payment and the maintaining of a record of all heavily damaged foreign cars while on the Carrier's lines, analyzing charges received, posting file references to a ledger and recording the amounts, bill numbers and months in which charges are received from car owners for repairing the cars. One of the requirements of the position was a thorough knowledge of AAR Interchange Rules.

Four of the applicants for the position, with their ranks on the roster and seniority dates were:

P. M. O'Brien,	117, March 28, 1951
W. W. Hart,	140, April 28, 1953
J. N. Bogovich,	153, June 17, 1958
E. S. Jablonski,	160, March 2, 1959

The position was awarded to E. S. Jablonski who, in the judgment of the Carrier, was the senior applicant possessing sufficient fitness and ability to handle the position. The claim is in behalf of the three senior applicants for the difference between their respective rates of pay and the rate of Position No. 35.

Rule 6, relied upon by the Petitioner, reads:

"Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except that this provision shall not apply to the excepted positions.

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability."

This Board has long recognized that the determination of "fitness and ability" is, in the first instance, a prerogative of management, and that such a determination once made will be sustained, unless it appears that the action was arbitrary or capricious. See Awards 14047, 13929, 12461, 5966, 4466 and 3466, involving the same parties.

A review of the record does not show that the Carrier's determination that the employe who was assigned to the position was the senior applicant possessing sufficient fitness and ability was arrived at in an arbitrary or capricious manner; nor does it contain any proof by the Claimants that they did possess sufficient fitness and ability for the position. We must, therefore, deny the claim.

In view of our decision as herein outlined, we do not consider it necessary to pass upon the procedural issue raised by the Carrier.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1968.