

Award No. 16471
Docket No. CL-16695

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6127) that:

(a) Carrier violated the current Clerks' Agreement at San Bernardino commencing April 20, 1965 when it failed to assign the senior Group 1 off-in-force-reduction employee to Information Ticket Clerk Position No. 4711; and

(b) Mr. R. Rau shall now be compensated for 8 hours' pay for each work day of Position No. 4711 in addition to any other compensation received commencing April 20 and continuing until he is placed on this position.

EMPLOYEES' STATEMENT OF FACTS: San Bernardino, California is a division point on the Los Angeles Division, and there are a large number of positions under the scope of the Clerks' Agreement at this location including positions in the Ticket Office which is in the same seniority district as positions in the Agent's Office, Yard Office and positions assigned to yard work. The Carrier maintains a training program at this location whereby new employees and Group 3 employees are selected and carried upon the payroll while schooled in the various phases of work in Group 1 and 2 positions, so that they will be readily available, when needed, for vacancies on positions that may come open.

The immediate dispute is concerned with the Carrier assigning an employee who did not have Group 1-2 seniority to a position in the Ticket Office in preference to assigning an employee holding such seniority to the position.

On April 13, 1965, Superintendent Johnson issued Bulletin No. 60-E advertising a number of positions open in the Los Angeles Division, including the following position, with bids closing 12:00 Noon, April 20, 1965:

After a full discussion of the facts in this case and the respective positions of the parties, you were advised that my previous decision as rendered in my letter to you under date of January 4, 1966, is respectfully affirmed.

Yours truly,

/s/ O. M. Ramsey"

OPINION OF BOARD: Carrier issued a bulletin advertising a number of positions open in their Los Angeles Division, one of which, the subject of this dispute, was the Information Ticket Clerk position at San Bernardino. No bids were received for this position by the closing time for bidding. Claimant was the senior off-in-force-reduction employee. Carrier assigned a junior employee to the position, and Petitioner alleges a violation of the applicable rules of the Agreement.

We direct our attention to Rules 9 and 17-C, both of which are quoted below:

"9-A. Employees with sufficient fitness and ability will, when bidding on bulletined positions, exercising displacement rights and/or when recalled for a new position or bulletined vacancy, be allowed thirty (30) working days in which to qualify, and failing, shall retain all their seniority rights except as provided in Rule 4-C and may bid on any bulletined position, but may not displace any other employee."

"Rule 17-C. Off-in-force-reduction employees having sufficient fitness and ability, whether idle or occupying short vacancies of fifteen (15) work days or less duration, shall be recalled to service in the order of their seniority to fill positions not awarded to senior Group 1-2 employees."

Arguments propounded by the Petitioner to the contrary notwithstanding, both of the above cited rules have a condition precedent which must be fulfilled prior to the seniority provision taking effect. Rule 9-A states as a condition precedent employees with sufficient fitness and ability, etc., will be allowed 30 days in which to qualify. The employee must have the sufficient fitness and ability beforehand. This judgment must be made by the Carrier as many awards emanating from this Board have so attested. Rule 17-C has the same condition precedent which must be fulfilled. The burden to prove that an employee has sufficient ability and fitness rests with the Petitioner, and if in fact such evidence was forthcoming, we would rule that Carrier's action was an abuse of its managerial prerogatives, was arbitrary and capricious, and as such, violative of the Agreement. Although Petitioner has presented us with some evidence indicating that Claimant has had a variety of responsibilities in various positions that he has held, there is not sufficient evidence in this record which would warrant us to characterize Carrier's action as arbitrary. 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 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 June 1968.