



Award No. 16480
Docket No. CL-17192

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

RAILROAD PERISHABLE INSPECTION AGENCY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6346) that:

(a) The Carrier violated the Agreement when it failed and refused to assign Claimant J. P. Buckley to the position of Inspector-Condition and Breakage advertised by Bulletin No. 338, issued June 22, 1966.

(b) The Carrier shall now be required to assign Claimant J. P. Buckley to the position to which he was and is entitled under the terms of the effective Agreement and compensate him for all loss sustained by him beginning June 29, 1966 because of the Carrier's failure and refusal to so assign him. Claim to continue until all corrections are made.

EMPLOYEES' STATEMENT OF FACTS:

(1) Claimant J. P. Buckley has seniority on District No. 4 dating from October 23, 1942. All employees covered by the Agreement have seniority as between themselves in the separate seniority districts provided for in the Agreement. A copy of the seniority roster of District Number 4, as of January 1, 1967, is attached and identified as Employees' Exhibit A.

(2) On June 22, 1966 Mr. L. Konkle, Carrier's District Inspector, issued Bulletin No. 338 advertising two positions titled Inspector-Condition and Breakage to all employees covered by the Agreement. A copy of Bulletin No. 338 is designated Employees' Exhibit B. Claimant Buckley filed proper application for the positions. On June 29, 1966, Carrier issued Bulletin No. 339, notifying all employees that the two positions had been awarded to Edward F. Terczak and A. Leigh Edwards, who had no seniority and no previous employment relationship. The two new employees soon left the service and their names do not appear on the roster as of January 1, 1967.

(7) As Employees' Exhibit K we reproduced an advertisement which appeared in the Philadelphia Bulletin in January 1967 and another which appeared in the New York Times in June 1967. Both were placed by the Carrier and the Board is requested to note that in the Philadelphia paper the requirement which the Carrier has adopted in lieu of the agreement is that the applicant must be an agricultural college graduate, but in New York the applicant must have "some agricultural schooling."

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Rule 6 of the Agreement between the Agency and the Brotherhood is quoted below in its entirety:

"RULE 6.

**BASIS OF PROMOTION, ASSIGNMENT AND
DISPLACEMENTS**

Promotions through bidding and displacement under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

Claimant J. P. Buckley has been employed with the Agency as a cooper in our Philadelphia District since October 23, 1942. The duties of a cooper are essentially to repack and repair damaged packages. Mr. Buckley, with two years of high school, has had no agricultural school training. No evidence has been submitted to the Agency that Mr. Buckley has the fitness and ability to qualify as an Inspector-Condition and Breakage. Accordingly, Mr. Buckley was not awarded one of the positions advertised in Bulletin No. 338 (Agency's Exhibit I). The two positions were awarded to two new employees: Messrs. A. L. Edwards and E. F. Terczak. Both men, graduates of agricultural colleges, hold bachelor degrees.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 22, 1966, Carrier issued Bulletin No. 338 advertising two positions titled "Inspector-Condition and Breakage." Claimant, who since his employment in 1942 occupied a position titled "Cooper," filed application. On June 29, 1966, Carrier issued Bulletin No. 339 notifying all employees that the two positions had been awarded to two persons who had no seniority or previous service.

It is the position of Employees that Rules 6 and 7(d) of the Agreement required that Claimant be assigned to one of the Bulletin positions and be given a minimum of 30 working days in which to qualify. Rule 6 reads:

"Promotions through bidding and displacement under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

Insofar as here pertinent Rule 7(d) provides:

"Employees awarded bulletined positions or exercising displacement rights, will be allowed thirty (30) working days in which to qualify."

Rule 7(d) is applicable only to employees: (1) awarded bulletined positions; or, (2) exercising displacement rights. Since Claimant was not in

either of these categories the Rule is not applicable in the instant dispute. Cf. Award No. 12461. The issue, therefore, narrows as to whether Carrier violated Rule 6 by its failure and refusal to assign Claimant to one of the bulletined positions of Inspector-Condition and Breakage.

This Board has been petitioned to interpret and apply rules identical or similar to Rule 6 in a great number of disputes. In essence we have held in such cases that: (1) the current possession of fitness and ability is an indispensable requisite that must be met before seniority rights become dominant; and (2) this Board will not set aside Carrier's judgment of fitness and ability unless it is arbitrary or capricious or has been exercised in such a manner as to circumvent the Agreement. See, for example, Award No. 11941, 12461, 13331, 14011, 15164. Also, we have held that for us to set aside a Carrier's judgment the record must contain substantial evidence of probative value that the claimant employee possessed, at the time, sufficient fitness and ability to perform the duties of the position which he sought. Id.

The record in the case before us is barren of evidence that would support a finding that Claimant possessed the indispensable fitness and ability. In fact the record as a whole can be construed as an admission by Claimant that he was lacking in the requisite. For the foregoing reasons 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 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 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 11th day of July 1968.