



Award No. 16546  
Docket No. CL-16893

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John H. Dorsey, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY 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-6178) that:

(a) Carrier violated the Clerks' Agreement at its 63rd Street Accounting office, Chicago, Illinois, when on May 27, 1964, it awarded a bulletined position to a junior employe, E. S. Jablonski, to the exclusion of senior applicants, Clerks C. Kazmier, P. Rocco, G. Chaney, J. Harreld, J. Lurgio, who made application for the bulletined position in accordance with the Agreement Rules.

(b) Clerk C. Kazmier shall now be compensated 68 cents per day for May 27, 1964, and each subsequent work day.

(c) Clerk P. Rocco shall now be compensated 68 cents per day for May 27, 1964, and each subsequent work day.

(d) Clerk G. Chaney shall now be compensated \$1.16 per day for May 27, 1964, and each subsequent work day.

(e) Clerk J. Harreld shall now be compensated \$1.16 per day for May 27, 1964, and each subsequent work day.

(f) Clerk J. Lurgio shall now be compensated 68 cents per day for May 27, 1964, and each subsequent work day.

**EMPLOYEES' STATEMENT OF FACTS:** On May 25, 1964, Bulletin No. 70 advertising vacancy on Position No. 26, Accountant, Car Repair Bureau, daily rate \$24.01, was issued by the Accounting Department. There were six (6) applicants for the position and in seniority order they were as follows:

Name	Seniority Date	Rate of Pay
C. S. Kazmier	October 18, 1951	\$23.33
P. J. Rocco	December 17, 1951	\$23.33
G. E. Chaney	June 8, 1953	\$22.85
J. A. Harreld	November 3, 1953	\$22.85
J. B. Lurgio	December 8, 1958	\$23.33
E. S. Jablonski	March 2, 1959	\$23.56

On May 27, 1964, Position No. 26 was awarded to junior employee E. S. Jablonski and by virtue thereof the seniority rights of the senior applicants and Rule 6, among others, of the current Agreement were violated.

Claim was filed with Auditor of Disbursements, S. G. Bucher, on July 15, 1964. See Employees' Exhibits Nos. 1-A and 1-B. August 12, 1964, claim was appealed to General Auditor, G. M. Craig. See Employees' Exhibits Nos. 2-A and 2-B. November 16, 1964, claim was forwarded to Employees' General Chairman for further handling. See Employees' Exhibit No. 2-C. On November 25, 1964, claim was appealed to Assistant Comptroller, K. H. Lyrle. See Employees' Exhibits Nos. 2-D and 2-E. January 20, 1965, claim was appealed to Manager of Personnel, W. J. Cassin, as evidenced by Employees' Exhibits Nos. 3-A through 3-II. Claim was discussed in conference April 8, 1965, but not resolved.

(Exhibits not reproduced.)

**EMPLOYEES' STATEMENT OF FACTS:** On May 25, 1964, position No. 26 was bulletined in the Car Repair Bureau of the office of the Auditor of Disbursements. The position consisted of auditing Illinois Central Railroad bills for collection made against foreign Carriers for repairs to railroad cars. The chief requirement of the position was that its occupant have a thorough knowledge of the AAR interchange rules and billing procedures.

Six employees applied for the job. They included in order of seniority C. S. Kazmier, P. J. Rocco, G. E. Chaney, J. Harreld, J. B. Lurgio, and E. S. Jablonski. The job was awarded to E. S. Jablonski, the only applicant with experience in the Car Repair Bureau, and who, by company standards, was the "senior applicant possessing sufficient fitness and ability" to handle the position.

The union filed a claim, arguing that the company had violated the seniority rights of the five senior employees. The company declined the claim on the basis that Jablonski was the only employee with sufficient ability to have seniority considered. The company also contended that five persons could not possibly claim rights to the same job simultaneously. The correspondence exchanged on the property is attached as Carrier Exhibits A - H.

The agreement between the parties is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On May 25, 1964, Carrier advertised a position of Accountant.

On May 27, 1964, the position was awarded to one E. S. Jablonski who was sixth in seniority among the applicants. Clerks contend that the award violated the seniority rights of the five senior applicants.

The pertinent provision of the Agreement is:

#### **"RULE 6. PROMOTION BASIS**

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."

Carrier says that Jablonski was the senior applicant having sufficient fitness and ability and therefore the award of the position to him was in compliance with Rule 6. Clerks aver that:

"Rule 6 clearly states that seniority is to be considered first, followed by fitness and ability; and that when one or more employes bid on a position, fitness and ability being sufficient, seniority shall prevail. The explanation under 'Note' clearly indicated that the word 'sufficient' is intended to more clearly establish the right of the senior employe in his bid for a position, and specifies that adequate fitness and ability is a qualification."

Further Clerks allege:

"It is unrealistic to believe that the five senior applicants with seniority as Accountant, dating from six years to fifteen years, on various positions, did not possess sufficient fitness and ability or could not have acquired it in a relatively short time."

We held in Award No. 12461, involving these same parties and Agreement, that:

"As to Rule 6, we are cognizant that it contemplates that promotions will be awarded to the senior employe bidder having 'sufficient' fitness and ability; and, not to a junior employe bidder having 'fitness and ability' superior to that of a senior employe."

We have long recognized that the determination of 'fitness and ability' is, in the first instance, a prerogative of management. Only if proven by a preponderance of evidence that the judgment of management was arbitrary, unreasonable, or exercised to circumvent the Agreement, will we find that management violated an Agreement provision like Rule 6. We are not unaware that this places a heavy, sometimes difficult, and sometimes impossible burden of proof on a Petitioner."

And, in recent Award No. 16360, also involving these same parties and Agreement, we reaffirmed our holdings in Award No. 12461.

In the record before us Clerks have failed to adduce evidence of probative value that any of the five senior applicants, Claimants herein, had sufficient fitness and ability to perform the particular duties of the position at the time it was awarded, pursuant to bulletin, to Jablonski; nor does it deny that Jablonski possessed these requisites, Clerks, therefore, failed to prove its case. 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 2nd day of August 1968.