

Award No. 16794
Docket No. CL-16922

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6231) that:

(a) Carrier violated the rules of the agreement when it failed to award position of Assistant File Clerk, Freight Sales Department, to one of the employees filing application for it under Bulletin No. 549.

(b) The position of Assistant File Clerk in Freight Sales Department be awarded to one of the applicants on the property; namely W. A. Wit, C. E. Fennington, Jr. and J. Moody and that his pay on this position commence December 7, 1965.

(c) Any adverse effect to the successful applicant, such as hours of service performed outside of the bulletined hours of the position shall be accorded at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a Freight Sales Department with the principal headquarters located in the Commercial Credit Building, 300 St. Paul Place, Baltimore, Maryland.

On November 23, 1965, advertising bulletin number 549 was posted (see Employees' Exhibit A). Subsequent awarding bulletin number 550 (see Employees' Exhibit B) gave the position to a new employee, Mrs. Margaret Ann Graves.

Three applicants besides Mrs. Graves entered their bid for the position. Messrs. W. A. Wit, C. E. Fennington, Jr. and J. Moody. These employees were from other seniority districts, but each held seniority under the rules agreement.

Immediate protest was filed by the organization under date of December 15, 1965 and pay was claimed (see Employees' Exhibit C) commencing with December 7, 1965. Under date of December 20, 1965 the Carrier denied the claim (see Employees' Exhibit D).

Appeal of the declination of the claim was made under date of February 12, 1966 by the organization (see Employees' Exhibit E).

Conference was held with the Carrier for the discussion on the subject and under date of April 21, 1966 the claim was declined in writing (see Employees' Exhibit F).

In the final appeal of the matter to the highest designated officer on the property to receive grievances, it was again denied under date of July 11, 1966 (see Employees' Exhibit G).

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. Copies of agreement in effect between the Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective January 1, 1948 have been filed with the National Railroad Adjustment Board.

2. This case involves an alleged violation of the Clerks' Agreement because of the Carrier not assigning either W. A. Wit, C. E. Fennington, Jr., or J. Moody to the position of Assistant File Clerk in the Sales Department, Baltimore, Maryland.

3. On November 23, 1965, Bulletin No. 549 was posted advertising a vacancy on the position of Assistant File Clerk in the Freight Sales Department on seniority district No. 9. A copy of this bulletin is attached as Carrier's Exhibit A.

4. No applications for this position were received from any employee in seniority district No. 9. Applications were received from the following three employees who were assigned in other seniority districts:

Name	Department	Seniority District	Seniority Date
W. A. Wit	Engineering	No. 5	12- 1-56
C. E. Fennington, Jr.	Transportation	No. 11	8-29-60
J. Moody	Transportation	No. 11	10-23-65

At the time the applications were filed, Mr. Wit was working in the Stores Department where he had a seniority date of July 9, 1965, and Mr. Fennington was working in the Accounting Department and had a seniority date of November 5, 1963 in that district.

5. For reasons which will be explained later none of the claimants was awarded the position in question. It was awarded to Mrs. Margaret A. Graves, a new employee, under assignment Bulletin No. 550 dated December 14, 1965, a copy of which is attached as Carrier's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective on December 13, 1965, Carrier assigned Mrs. Graves, until then a non-employee, to fill a bulletined position of Assistant File Clerk in the Baltimore Freight Sales Department. Claimants, all employees

in another seniority district, had properly applied for the position. Organization contends that since all had sufficient fitness and ability for the position, one of the Claimants should have been awarded the position and that Carrier's failure to award it to one of them violated the Agreement.

The applicable provision of the Agreement is Rule 26:

"Employees filing applications for positions bulletined on other districts or on other rosters, who possess sufficient fitness and ability and meet the employment standards of the seniority district where the vacancies exist, will be given consideration over non-employees or employees not covered by this Agreement."

Carrier contends that Claimants were given the proper consideration under Rule 26 and were properly passed over; Carrier also contends that one intention of the Rule is "to protect the managerial discretion of the employing officer to select the best qualified persons for the position." While we agree that there is managerial discretion, if reasonably exercised, initially to determine sufficiency of fitness and ability and whether the applicant meets the employment standards of the involved seniority district, these prerogatives do not add up to discretion to select the best qualified person.

However, to prove its case, it was necessary for Organization to prove that Claimants, or at least one of them, in addition to being sufficiently fit and able, met the employment standards of the seniority district where the vacancy existed. No such proof is in the record; consequently we must 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 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 21st day of November 1968.

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