



Award No. 17171

Docket No. CL-17950

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) That the Carrier violated the current Clerks' Agreement on November 22, 1967 by ignoring the seniority status of C. S. Honaker, Akron, Ohio, in awarding position #091005, Secretary, Office of Division Sales Manager, daily rate \$27.51 per day, to an employee junior in seniority, and

(2) That C. S. Honaker shall now be paid \$1.46 (the difference between the rate of the position denied to him and the rate of the position held) on November 28, 1967 and on each subsequent work day, Monday through Friday of each week, until he is assigned to position #091005, and

(3) That C. S. Honaker shall be assigned a seniority date of November 28, 1967 in Group 1 on Roster #59, the date he would have assumed duty under Roster #59 had he not been denied assignment to position #091005.

EMPLOYEES' STATEMENT OF FACTS: Dated at Pittsburgh, Pennsylvania on November 15, 1967, the Merchandise Freight Sales Department issued Bulletin #1347 requesting applications for position #091005, Secretary, Office of the Division Sales Manager, Akron, Ohio, at a rate of \$27.51 per day. This office is under the coverage of Roster #59. The position is designated as class "C" and is under all of the rules of the Clerks' Agreement.

Applications were received from C. S. Honaker, seniority date May 22, 1961, Roster #74, and G. R. Carson, seniority date July 30, 1965, roster #74. Neither employee held a seniority date on Roster #59.

On November 22, 1967, Bulletin #1348 was issued awarding position #091005 to the junior employee, G. R. Carson.

Both applicants were qualified for the position.

At the time the applications were made, the senior employee, Mr. Honaker, held a position as Clerk to the Road Foreman of Engines, Akron, Ohio, and the junior employee, Mr. Carson, held a position as Chief Clerk to the Terminal Trainmaster, Akron Junction, Ohio.

CARRIER'S STATEMENT OF FACTS: The claim in this case alleges that the Carrier violated the Clerks' Agreement on this property when it did not award the position of Secretary, Division Sales Manager's Office, Akron, Ohio, to Mr. C. S. Honaker on November 22, 1967. The claim also asks that Mr. Honaker be assigned a seniority date of November 28, 1967 on Roster No. 59 and be paid \$1.46 per day each Monday through Friday since November 28, 1967.

The facts in this case are as follows:

On May 22, 1961 Carl S. Honaker, the Petitioner, was hired as a Clerk at Cleveland, Ohio, on this Carrier's Akron-Chicago Division. Mr. Honaker's seniority date is May 22, 1961 on Roster No. 74 which governs all clerical positions on the Akron-Chicago Division. Mr. Honaker progressed through a series of clerical positions and at the time of the instant claim was working at Akron, Ohio, as Clerk to the Road Foreman of Engines.

George R. Carson was hired at Akron, Ohio, on August 20, 1962 as Clerk to the Road Foreman of Engines. This assignment was a non-contract position at that time. Carson was subsequently promoted to Chief Clerk to the Terminal Trainmaster, a non-contract position also. This position was later placed under the scope of the Clerks' Agreement, at which time Mr. Carson acquired a seniority date of August 1, 1965 on Roster No. 74. Mr. Carson was still holding this assignment on the date of the claim at hand.

The Carrier maintains a division sales office at Akron and clerical positions in that office are in a separate seniority district governed by Roster No. 61. On November 15, 1967 a temporary vacancy on Position No. 091005, Secretary to the District Sales Manager, was advertised to employees holding seniority on Roster No. 61. No bids for the position were received.

Neither the Petitioner nor Mr. Carson held seniority rights on Roster No. 61 but both made application for the position. Both men were interviewed for the assignment and the results of these interviews indicated to the local supervision that Mr. Carson was the most qualified applicant available. As a consequence, he was awarded the position and assigned a seniority date of November 28, 1967 on Roster No. 61, the date he began working the assignment.

OPINION OF BOARD: The parties are in accord concerning the facts which precipitated the instant dispute. A position of Secretary to the District Sales Manager in Seniority District No. 61 was advertised. Two applications were received from employees holding seniority in Seniority District No. 74—another Seniority District; but none was received from any employee in Seniority District No. 61. The two individuals who did apply were G. R. Carson, seniority date of August 1, 1965, and the Claimant, seniority date of May 22, 1961. Upon the position being awarded to Carson, the junior employee, the Organization filed the instant claim on the ground that the Carrier violated the effective Agreement by its failure to select

the Claimant—a senior employee—pursuant to Rules 30 and 44. The Carrier, in turn, argues that only Rule 44 is applicable herein.

The pertinent portions of Rules 30 and 44 are hereinafter quoted:

"RULE 30

Promotion, Assignment and Displacements.

Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements under these rules shall be based on seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail.

NOTE—The word "sufficient" is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy, or exercise displacement rights, where two or more employees have adequate fitness and ability."

"RULE 44

Filing Applications.

Employees covered by this agreement 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 vacancies exist will be given preference over non-employees or employees not covered by this agreement."

We are fully aware of the significance of seniority in labor-management relations. However, in our view, the issue herein is controlled by Rule 44. In essence, the said Rule provides for a situation where applications are submitted by employees from other districts of this Carrier. These employees will then be accorded preference over non-employees or non-bargaining unit employees, provided they possess sufficient fitness and ability. In this regard, the emphasis of preference in selection is placed over non-employees or employees not covered by this agreement. Hence, it is our conclusion that the element of seniority is not a factor herein and, in that sense, is a modification of Rule 30, under these circumstances.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.