



Award Number 17612

Docket Number CL-18105

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6582) that:

- (1) Carrier violated the terms of the currently effective Agreement between the parties at Fort Worth, Texas when beginning on August 7, 1967, it assigned the junior employee to the position of Chief Clerk-Cashier at that point without giving due consideration and opportunity to senior employees who made application for the position.
- (2) Mrs. Fannie L. Roberts, the senior bidder for the position of Chief Clerk-Cashier, now be compensated for the difference in the rate of Bill Clerk position she occupied and/or any other position she may occupy, and that of Chief Clerk-Cashier beginning August 7, 1967 and continuing until the violation is corrected.
- (3) R. A. Cappleman now be compensated for the difference between his earnings beginning August 7, 1967 and the rate of the Bill Clerk position presently occupied by Mrs. Roberts until the violation is corrected.
- (4) R. G. Head now be compensated for the difference between his earnings beginning August 7, 1967 and the earnings of Mr. Cappleman until such time as the violation ceases to exist.

NOTE: Had Mrs. Roberts been assigned to the position of Chief Clerk-Cashier, employees Cappleman and Head would have exercised their seniority and moved up to positions as indicated above; i.e., Mr. Cappleman to the position of Bill Clerk occupied by Mrs. Roberts and Mr. Head to Mr. Cappleman's vacancy.

EMPLOYEES' STATEMENT OF FACTS: On August 2, 1967, Carrier bulletined the position of Chief Clerk-Cashier at Fort Worth, Texas (employees' Exhibit 1(a)), rate of pay \$26.48 per day. Four employees bid for the vacancy as follows:

Mrs. F. L. Roberts—Seniority Date 6/16/47

Mr. R. A. Cappleman—Seniority Date 4/28/60

Organization takes the position that Mrs. F. L. Roberts should have been assigned to the position of Chief Clerk-Cashier, and hence this dispute.

(Exhibits not reproduced)

OPINION OF BOARD: The vacancy of Chief Clerk-Cashier at Fort Worth, Texas was filled by the junior employee of the four who bid for the position. The three unsuccessful bidders for this position were notified by Carrier of its decision in a letter dated August 15, 1967. The letter advised them (Claimants) that the position had been awarded to the junior employee; and that they (Claimants) did not possess the fitness and ability to be assigned to such position. The Organization contends that Rule 3 (Seniority), 7 (Promotion Basis), and 16 (Time In Which To Qualify) were violated by Carrier when it awarded the position of Chief Clerk-Cashier at Fort Worth, Texas to a junior employee. In order to uphold the contention of the Organization in this instance, we must find that the action of Carrier was arbitrary and capricious (See Awards Nos. 12994 (Hall), 13616 (Moore), 16321 (Dugan), 16426 (Goodman) and 16871 (Franden). Rule 16 is not applicable in this dispute for the reason that it (Rule 16) applies only to employees who are awarded positions and fail to make good. See Awards Nos. 13986 (Wolf), 14765 (Devine), 16471 (McGovern) and 14976 by this Referee.

It has long been a fundamental rule of this Board that fitness and ability for a position is matter of determination reserved exclusively to the Carrier, unless such determination is made in an arbitrary or capricious manner. In this dispute, the record discloses that Carrier acted in good faith. In June of 1967, the revenue at the Fort Worth Station was in excess of \$740,000.00, thus demanding an employee with an extremely high degree of competency to fill the position in question in this dispute. The record further discloses that Claimant Roberts had previously been disqualified from a Chief Clerk's position; that three of the Carrier's auditors required 248 audit hours to renovate the records and accounts at Fort Worth in order that the new Chief Clerk-Cashier could assume such position; and that the periodic work of Claimant Roberts contributed to such condition. The record also disclosed that Claimant Roberts had been given periodic opportunities to demonstrate her fitness and ability (See Pg. 14 of Exhibit "A" of Carrier's submission).

It, therefore, is the finding of this Board that Carrier did not act arbitrarily or capriciously herein and the Claim of Mrs. Fannie L. Roberts will be denied. *Having denied the Roberts Claim, it is unnecessary to consider the Claims of Cappleman (Paragraph 3 of Claim) and Head (Paragraph 4 of 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.

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 17th day of December 1969.