



Award Number 17904

Docket Number CL-18523

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
EMPLOYES**

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6682) that:

- (1) The Carrier violated the provisions of the effective Clerks' Agreement when it arbitrarily and capriciously disqualified Mr. Izzy Feinstein from Position No. 16, Relief Janitor, on March 27, 1968.
- (2) The Carrier shall now be required to compensate Mr. Izzy Feinstein for all earnings lost as a result of being denied the right to fill Position No. 16, Relief Janitor, commencing March 28, 1968 and continuing each and every day thereafter that he is denied the right to work said position.
- (3) The Carrier shall now be required to reinstate Mr. Izzy Feinstein to Position No. 16, Relief Janitor and shall also be required to make premium payments on his behalf in the appropriate amounts required under Travelers Group Policy Contract GA-23000, as amended, for all benefits prescribed in that contract for each and every month claim is here made.

EMPLOYEES' STATEMENT OF FACTS: Mr. I. Feinstein is listed as Rank No. 100, Trucker, Mail and Baggage Department, with a seniority date of May 20, 1949, on the Chicago and Western Indiana Railroad Company System Seniority Roster, revised as of January 11, 1968.

From May 20, 1949 until March 19, 1968, approximately 19 years, the claimant had been employed exclusively in the Carrier's Mail and Baggage Department, holding various positions in that Department. However, as the result of a force reduction by the Carrier, the claimant could no longer retain a position in the Mail and Baggage Department and, therefore, exercised his seniority rights to Position No. 16, Relief Janitor, Station Master's Office, effective March 20, 1968. This position is assigned as follows:

Hours of Assignment

Sun.—4:30 P.M. go 1:00 A.M.; Mon. & Tues.—Off; Wed.—4:30 P.M. to 1:00 A.M.; Thurs.—10:00 A.M. to 7:00 P.M.; Fri. & Sat.—4:30 P.M. to 1:00 A.M.

Testimony given at the hearing by the Station Master, Assistant Station Master and Principal Assistant Station Master, confirmed that the claimant was not qualified to perform the duties of Janitor Position No. 16. Mr. Feinstein was represented at this hearing by his General Chairman and Vice General Chairman.

The claimant and his representatives participated fully in the hearing (See page 10, Exhibit "A") and did not refute the testimony of the three supervisors but seemed satisfied to cast doubt upon the integrity, experience and ability of these men. (Page 5 of Exhibit "A"). This is utter nonsense! No testimony was offered to the effect that claimant was qualified. The case of the Brotherhood is based solely on innuendo and vilification. The three men who testified as to the inability of claimant to satisfactorily perform his duties are all men who have come up through the ranks. They have dealt with no less than thirty-two "bumps" from the Baggage and Mail Department without a single disqualification until it was necessary to take action regarding claimant. This group of thirty-two included representatives of every minority group, every age group, men of every educational level and some who represented unusual language difficulties. Carrier submits that claimant was not discriminated against in any way, he simply was not qualified to perform the duties of the position which he chose to bump and his co-workers were given the choice of "carrying" such a man or of reporting his inability to perform. They chose the latter course.

If the claimant had performed his duties, he was contractually permitted to produce witnesses from the ranks of his co-workers to so testify. It will be noted that no such witnesses were introduced.

In discussions at the final level of appeal, much emphasis was placed on reference by a supervisor to the physical condition of claimant. However, citation by the General Chairman of Rules 22 and 63 would seem to indicate that although claimant was not disqualified on a physical basis, his own representatives considered him unqualified and worthy of some special consideration over and above his fellow employees. (See pages 2 and 3, Exhibit "A").

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant is listed Rank No. 100, Mail and Baggage Department, seniority date May 20, 1949, on Carrier's System Seniority Roster, revised as of January 11, 1968.

From May 20, 1949 until March 10, 1968, approximately 19 years, he was employed exclusively in the Mail and Baggage Department, holding various positions therein.

As a result of reduction of force Claimant exercised his seniority rights to Position No. 16, Relief Janitor, Station Master's Office, effective March 20, 1968. After six days of work on the Janitor's position Mr. Wilde, Station Master, addressed the following to Claimant:

"This is to advise you, effective March 26, 1968 you are hereby (six) disqualified from position as Relief Janitor, in the Station Master's Department."

As a result Claimant reverted to a furloughed status.

Claimant requested a hearing pursuant to the Rules of the Agreement relative to his disqualification. It was held April 8, 1968.

Under date of April 18, 1968 the Station Master addressed the following letter to Claimant:

"The hearing definitely developed that you did not perform the work required of you as janitor while you were on duty working the janitor's position on several days, all as developed and outlined in the investigation.

Due to the fact that the investigation developed that you did not properly perform your duties as janitor, the disqualification notice which was given you on March 27 is hereby continued and you are disqualified as a janitor for this company."

The transcript of the hearing contains substantial evidence that Claimant could not perform or would not perform the janitorial duties of Position No. 16. Further, we find that Carriers removal of Claimant from position No. 16 and placing him on the furloughed list was not unreasonable, arbitrary or capricious. 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 Employes involved in this dispute are respectively Carrier and Employes 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 8th day of May 1970.