

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22279
Docket Number CL-22059

David P. Twomey, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express **and** Station **Employees**
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8374, that:

"(a) Carrier violated the **provisions** of the current Clerks Agreement at Topeka, Kansas, effective October 1, 1975, when it denied qualified **employees** the right to fill vacant Position No. 3014 in the Internal Audits Office and placed S. M. **Lumley** thereon; and

(b) -Carrier shall now choose from one of the following named Claimants to be placed on position **and** allow the above named **employee** the difference in rate of position so assigned and Position No. 3014, for each workday **commencing** October 1, 1975, and continuing forward for each workday thereafter until this violation ceases to exist: Claude A. Savage, Richard E. Taylor, J. J. Dutch, **JoAnna** Erickson, Margaret Tork, Mike **Kendall** and **Louie** Wright.

(c) In addition to those above named there are numerous off-in-force-reduction **employees** with seniority dates well within the requirements of Supplement "A", Item 6, that possess the necessary fitness and ability to perform the duties of Position No. 3014, Internal Auditor.

(d) In addition to the monies claimed, Claimant shall now receive **ten** per cent (10%) interest to be compounded on each and every pay period for the above mentioned difference in rate from October 1, 1975, forward until such **time** that Claimant is placed on Position No. 3014."

OPINION OF BOARD: On September 19, 1975, the Carrier contacted the **General Chairman's** office, and requested the Organization to waive the provisions of Item 6, Supplement "A", of the current Clerk's Agreement in order **that** Mrs. S. **Margaret Lumley** could be assigned to the position of Internal Auditor, Position No. 3014, in the Office of Internal Audits, Topeka, Kansas. The Carrier stated in a letter dated September 23, 1975 that Mrs. **Lumley** is a female and qualified to fill the position; and her assignment to that **position** would be in keeping with Santa Fe's policy to pursue a positive **and aggressive program** to achieve parity, pursuant to Executive Order No. 11246 and Revised Order No. 4 - Affirmative Action Programs. In the September 23, 1975 letter the Carrier agreed to give consideration to any qualified clerical **employe** acceptable to Management; and the Carrier gave the Organization the responsibility of furnishing a list of **employees** so qualified and interested. A list of 37 **employees** was furnished the Carrier. By letter dated October 9, 1975, the Carrier notified the Organization that 34 of the 37 did not meet the educational requirements for the position, and the remaining three individuals were not **recommended** by the Supervisors for the position. Accordingly, Mrs. S. Margaret Lumley, a newly hired **employe** not previously covered by the Agreement, was assigned to the position by the Carrier. By letter dated November 21, 1975 the instant claim was filed, listing seven claimants, some of whom were not on the original list of 37.

The qualifications set by the Carrier for the position of Internal Auditor (PAD) are:

1. A degree from an accredited university or college and a **minimum** of six hours of accounting.
2. Positive opinions on individual by his or her current supervisor
3. Consideration of individual's past productivity records
4. Attendance and discipline records
- 5 . Work experience
6. Physical fitness
7. Ability to converse both orally and in writing
8. A willingness on the part of the individual to travel on Company Business, **and/or** transfer to headquarters.

Supplement "A" of the current Clerks' Agreement states in pertinent part:

"2. Partially excepted positions will be identified as 'PAD' or '**PADO**' positions and will not be subject to the promotion, assignment or displacement rules ('**PADO**' positions not being subject to the overtime rules) of the Clerks' Agreement, but the incumbents of **partially excepted** positions are subject to the other rules thereof, except **as** otherwise agreed. Assignments to vacancies on these positions may be made without regard to the promotion rule and without bulletining, with Management having the right to select the employees to be **assigned thereto**. Assigned employees cannot be displaced **from** these positions through the exercise of seniority rights."

* * * *

"6. **Employees** assigned to 'PAD' or '**PADO**' positions shall **have** not less than one year of seniority under the Clerks' Agreement, unless otherwise agreed to by the parties."

The Internal Auditor position is classified as a partially excepted position (PAD). **Under** Item 6 of Supplement "A" as set forth above, employees assigned to PAD positions shall have not less **than one** year of seniority. Mrs. **Lumley**, a newly hired **employee** not previously covered by the Agreement, did not have the required one year of seniority set forth **in** the Agreement. And, no agreement was reached by the parties to place Mrs. **Lumley** on the position. Item 6 is clear and **unambiguous** in the requirement that employees assigned to PAD positions shall have not less than one year of seniority, unless otherwise agreed to by the parties. Assignments made to vacancies on PAD positions may be made by the Carrier without regard to the promotion rule and without bulletining, with Management having the right to select the employees to be assigned thereto. **However** the language of Item 6 could not be more clear in setting forth the restriction and requirement that the employees assigned to PAD positions shall have one year's seniority under the Clerks' Agreement. **No** reading of Item 2 and Item 6 grants the Carrier the right to place a new hire without any seniority on a PAD position. We find that the Carrier **is** in violation of Item 6 of the Agreement.

The Organization requests that the Carrier choose one Of seven named Claimants to be placed **on** the position, and allow the selected claimant the difference in the rate of pay between the individual's assigned position and Position NO. **3014** for the period of October 1, 1975 to date. The Carrier has the unilateral right to set forth the qualifications necessary for the position of Internal Auditor. The record is clear that none of the seven **Claimants** met all **of the** qualifications required for the Internal Auditor position. Certainly this Board cannot **and** will not require the Carrier to place an **employee** on a position who does not meet the requirements of that position. It is the responsibility of the Organization to identify before the Board a qualified person available to fill the vacant position, and this the **Organization** has not done. As such, we must deny the Organization's claim to place a claimant **on** the position and pay a back pay differential.

We **find** that the Carrier violated the Agreement; and we find that the Organization has not met its burden of proof on the matter of remedy- as such all remedial aspects **contained in the** Organization's claim must be denied.

We do urge the Carrier and the **Organization** to set up a procedure for the identification of qualified and potentially qualified employees in the various seniority districts on this property who possess or potentially possess the requirements the Carrier has outlined for selection of employees to fill Internal Auditor positions. The Carrier, with as **much** disclosure **to** the Organization as possible under the law, may screen employees based on the required general educational background and accounting course qualifications. Carrier may interview these employees and their supervisors, and make a determination on their qualifications. The Organization should be notified of qualified employees, and **also should be** notified concerning those individuals with potential qualifications. For example, Claimant Richard E. Taylor had a college degree but did not have the required number of accounting hours. So **notified, this employee** may

choose to seek the necessary accounting credits to qualify for the position. The record indicates that the Organization has cooperated with the Carrier in the matter of Carrier's **commitment** to the goals of Executive Order No. 11246. With full information available to the Organization and the Carrier on the qualification of **employees** in the various seniority districts, a more informed cooperation can be anticipated. Certainly, on the record before this board, the Carrier has no right to unilaterally act **as** it did in violation of the contract.

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 **claim is disposed of as per Opinion.**

A W A R D

Claim disposed of as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this **12th** day of **January 1979.**