

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 22357  
Docket Number CL-21514

Irwin M. **Lieberman**, Referee

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

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8028) that:

(a) Carrier violated rules of the current Clerks **Agreement**  
on **August** 26, 1974, when it refused and failed to properly award a  
bulletin position to the oldest **successful** bidder at Superintendent's  
Office at Fort Madison, Iowa, and

(b) Carrier shall now compensate Mr. Joe Cloud from his  
current Position 6018, Assistant Maintenance Clerk at the rate of  
\$43.1687 per eight (8) hours work to Position 6000, Assistant Chief  
Clerk at the rate of \$46.0278 per eight (8) hours work a difference  
of \$2.8591 per day, and an additional \$2.00 per day being held off job  
over ten (10) days.

(c) Carrier shall **immediately** award Position 6000, Assistant  
Chief Clerk to Joe Cloud.

**OPINION OF BOARD:** Claimant, with a seniority date of June 22, 1945,  
had been the incumbent of an Assistant Maintenance  
Clerk position on the Illinois Division Superintendent's Office **Seniority**  
District. On August 13, 1974 the position of Assistant Chief Clerk,  
Position No. 6000, was advertised. Claimant bid on the position but on  
August 26, 1974 he was advised that his bid had been declined and that  
the position had been awarded to R. S. Kern, with a seniority date of  
October 1, 1958.

Petitioner alleges that Carrier violated the Agreement when  
it refused to assign Claimant to Position No. 6000 in the Superintendent's  
Office at Fort Madison, Iowa on August 26, 1974. Petitioner relies on  
Rules 8 and 9, **among** others. Those rules provide in pertinent part:

"RULE 8--PROMOTIONS, ASSIGNMENTS, DISPLACEMENTS

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

NOTE: The work 'sufficient' is intended to more clearly establish the prior rights of the senior of two or more qualified **employees** having adequate fitness and ability for **the** position or vacancy sought in the exercise of seniority."

"RULE 9--QUALIFYING

9-A. **Employees** with sufficient **fitness** and ability will, when bidding **on** bulletined positions, transferring, exercising displacement rights and/or when recalled for a **new** position or bulletined vacancy, be allowed 30 working days in which to qualify, and failing, shall retain all their seniority rights and **may** bid on any bulletined position but may not displace any other **employee**.

9-B. When it is decided, following informal hearing with employee involved, that the employee is not qualified for position to which assigned, he may be removed therefrom before the expiration of 30 working days. At such informal hearing the employee may be represented by his duly accredited representative or an employee of his craft. The **informal** hearing shall be held within three days from date **employee** is **notified unless** a longer time is agreed to. The right of appeal from **Management's** decision is recognized.

9-C. Cooperation will be given **employees** by all concerned in their efforts to qualify. If Management requires an employee to break in on a position to which he is assigned for the purpose of familiarization, the employee will receive the rate of the position. Management will determine the period of time for the break-in."

Carrier argued that Claimant did not have the requisite fitness and ability to handle the position **in** question and that hence it was justified in awarding the position to a less senior **employee**.

While we recognize that it is Carrier's prerogative to determine the fitness and ability of its **employees**, such right cannot be used in derogation of the **employees'** seniority rights. **Each** dispute when fitness and ability is at issue must be examined carefully to ensure that proper decision has been made. Thus, whereas the principles in these disputes are well established, the facts in each case are determinative.

**Claimant** had worked **in** the Mechanical Department of Carrier from the time of his employment in 1943 until the department was closed on March 10, 1972. At that **time in** 1972 he was transferred to the Superintendent's Office and his seniority was dovetailed into that roster (as agreed to by the parties **in** an implementing agreement). In the Superintendent's Office Claimant was first the **incumbent** of an AAR Clerk position which **involved** some of the remaining work of the Mechanical Department. **On** January 2, 1973 he bid and was awarded the position of Maintenance Clerk which included work for the Operating Department.

The record indicates that Claimant had occupied a number of different positions over the years. Those positions included: Crew Caller, Car Clerk, File Clerk, Timekeeper, Head Timekeeper and Chief Clerk. Petitioner cites in particular Claimant's experience as Timekeeper and as Chief Clerk as evidence of his ability to handle the position of Assistant Chief Clerk. Also, the Organization argues that Carrier throughout the handling of this dispute on the property continually alluded to the superior experience of Mr. Kern to whom the job had been awarded.

Carrier attributed its decision that Claimant did not have sufficient fitness and ability to two **principal** conclusions: 1. He did not have any knowledge of the work performed in the Operating Department, including in particular good working understanding of the Non-Operating Labor Agreements, 2. ~~He~~ He did not have a working knowledge of **every** position in the Superintendent's office so that he could supervise and assist **employees** in the performance of their duties.

Petitioner points out that Claimant had demonstrated his ability to supervise and **carry** comparable responsibility in his experience as Chief Clerk. Furthermore, it is pointed out that **knowledge** of Shop Craft Agreements, which was part of the requirements for the Assistant Clerk's position, was part of Claimant's duties both as Chief Clerk and as Head Timekeeper. Petitioner argues that Carrier had no right to pick Mr. Kern simply because he had more years of experience in the Superintendent's Office; in short Carrier has no right to pick **employees** it considers best qualified under the rules.

The dispute in this case comes down to the question of whether special **knowledge** of a particular department and of certain labor agreements is an integral part of **an employee's** fitness and ability. If this were a partially excepted position as described in Supplement A of the Agreement, we would not question Carrier's conclusion. However, based on the facts of **record**, we cannot agree with Carrier's **conclusion**. If the **seniority** provisions of **Rule 8** are to be given any weight, the **years** of incumbency in a particular department and the attendant experience and knowledge gained (or lack of same) cannot be determinative of fitness and ability. This Board in numerous past awards has said that **an employee** need not be experienced in the particular job or department **and** that an opportunity should be given to an applicant with the requisite "fitness and ability" albeit inexperienced (Award 8197). The language in Award 3537 **is** particularly relevant:

"The general purpose of **Rule 8**, and similar rules on other **carriers**, is to **eliminate** favoritism and prejudice in assigning positions within the scope of the Agreement. This is accomplished by requiring the senior applicant in point of service to be assigned if he has sufficient fitness and ability to do the work. This does not mean that the **employee** has to be immediately fitted for the job. It means that he has such intelligence, training and experience that it could be reasonably assumed that he could do the work in a satisfactory manner after a brief apprenticeship, usually a qualifying time fixed by the rule itself."

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It is our conclusion in this case that Carrier's decision was arbitrary and unreasonable. Claimant should have been permitted the qualification period specified in **Rule 9**. **His** lack of specific **knowledge was** not an indication of insufficient fitness and ability. The **Claim must** be sustained. However, we do not view the alleged infraction of **Rule 11-D** as applicable and Claimant will not receive the \$2 per day as part of the indemnification. The Claim is sustained subject to Rule 9.

**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 violated.

A W A R D

Claim sustained to the extent indicated **in** the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March **1979**.