**Award Number 82**
**Docket Number CL–92**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## Third Division

**Paul Samuell, Referee**

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**PARTIES TO DISPUTE:**

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY**

DISPUTE.—"Shall Mr. M. E. Martin, seniority date November 11, 1924, be permitted to displace Mr. C. J. Smith, seniority date July 1st, 1926, from position designated as Desk No. 10 in office of Assistant Freight Traffic Manager, Little Rock, Ark., and shall Mr. Martin be compensated for monetary loss sustained account not being permitted to displace Mr. Smith, effective February 1st, 1935?"

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Paul Samuell was called in as Referee to sit with this Division.

The parties have jointly certified the following facts, and the Third Division so finds:

> "Effective February 1, 1935, position of Rate Clerk held by Mr. M. E. Martin, seniority date November 11, 1924, office of Assistant Freight Traffic Manager, Little Rock, was cut off account of reduction in force. Mr. Martin, in the usual way, served notice that he desired to displace Mr. C. J. Smith, seniority date July 1, 1926, from position of Rate Clerk, Desk No. 10, rate $177.30. Mr. Martin was informed that effective on that date the office of Assistant Freight Traffic Manager had adopted 'new rules' requiring all applicants for any position in the office to undergo a written examination. Mr. Martin, after reviewing the plan of rules of qualification and questionnaire, declined to submit to this examination and was therefore denied an opportunity to place himself on position known as Desk No. 10 until such examination and questionnaire had been completed."

An agreement bearing effective date of January 1, 1931, exists between the parties, and employee's claim is based on that part of Rule No. 25 thereof, reading:

> "REDUCING FORCE.—When reducing forces, seniority rights shall govern. As much advance notice as possible will be given employes affected in reduction of forces, or in abolishing positions. Employes whose positions are abolished may exercise their seniority rights over junior employes. Other employes affected may exercise their seniority in the same manner. Employes displaced whose seniority entitles them to regular position shall assert their rights within ten (10) days. (See Rule 5, Item 30.)"

Prior to June 21, 1933, question as to application of Rules 7, 23, and 25 to an employee requesting the right to displace on higher rated or more important positions, was in dispute between the parties and on that date disposed of as follows:

> "It is considered that Rule 17 will apply when employees are denied the privilege of bumping on higher rated or more important positions, the same as when their applications for bulletined vacancies are not accepted."

Rule 17 referred to reads as follows:

> "When an employe junior to other applicants is assigned to bulletined position, the senior employees making application will, upon written request, if filed within fifteen days, be advised in writing reason disqualified."

This interpretation modified the application of Rule 25 to extent of applying Rule 17 to a dispute of this kind and not making it mandatory for the carrier to assign an employee, if not qualified.

The record in this dispute discloses that claimant Martin, through the exercise of seniority rights, is attempting to displace an employee on a higher rated tariff position from which position he himself had been disqualified in the previous year. As a matter of fact, in the month of December 1933 claimant Martin sought the position which he now again requests, and a serious question arose between the management and claimant Martin as well as the employees' representatives, as to his qualifications. As the result of negotiations, Mr. Martin was first given a thirty-day trial, and later this time was extended to ninety days, at which time he was relieved from duty, and he was fully informed as to the reasons for his disqualifications.

The position in question is a highly specialized tariff position. It is not ordinary clerical work, and it is quite conceivable that many individuals who may have occupied clerical positions for many years might not be able to handle the position in question. After Mr. Martin's trial and disqualification, the management, as it claims, began the preparation of an examination which consisted of questions to be answered by applicants for the position, thus enabling the management to determine the qualifications of the respective applicants. On February 1, 1935, the management adopted the rule which required all applicants to submit themselves to the examination. Claimant Martin refused to take the examination. Mr. Martin and his representatives claim that the questions were unfair and tricky and that they were prepared for the purpose of disqualifying him. This Division has not sufficient knowledge of the tariff question to determine the fact as to the fairness of the questions.

In our opinion the record in this case leads us to the conviction that the management had a justifiable reason in questioning the ability of the claimant. It is our further opinion that claimant Martin should have submitted himself to the examination, and in case he was unsuccessful he could have, with propriety, demanded that the results of his examination be compared with those of other applicants; and if subterfuge had been practiced by the management and injustice done, this Division could have then determined the question on appeal.

Employee's representatives further contend that there is nothing in the Agreement between the carrier and employees which will permit the management to invoke a rule requiring applicants for positions to pass examination. The fact is that there is nothing in the Agreement which prescribes what method shall be adopted in determining the ability and efficiency of applicants. This Division is of the opinion that any reasonable rule of practice would be justified in determining qualifications, and that claimant should have submitted himself to interrogatories for the purpose of determining whether he or any other person was qualified. This Division is not at this time either approving or disapproving the policy of the carrier management in requiring written examinations. In view of the fact that the claimant had previously been disqualified and his subsequent refusal to submit himself to further examination, leads this Division to the opinion that the management was within its rights of discretion in refusing to permit the claimant to exercise his seniority rights by displacing an employee on a higher rate tariff position.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
*Secretary.*

Dated at Chicago, Illinois, this 3rd day of September 1935.