

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Frank M. Swacker, Referee

**PARTIES TO DISPUTE:**

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

**NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of Victor Friedlund for assignment to position of crane operator, South Tacoma store, and payment for wage losses from July 1, 1936."

**STATEMENT OF FACTS:** The following statement of facts was jointly certified by the parties:

"On June 16, 1936, vacancy notice No. 74 was issued advertising vacancy for crane engineer on self-propelling gasoline operated locomotive crane No. 91. Mr. Friedlund with seniority date of May 11, 1923, and Mr. Wm. Barnett with seniority date of January 26, 1926, made application for the position. It was assigned to Mr. Barnett."

**POSITION OF EMPLOYES:** "Rule 5 (a), Clerks' Agreement, reads as follows:

'Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions.'

'NOTE: The word "sufficient" is intended to more clearly establish the right of the senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.'

"Employees contend that Mr. Friedlund had sufficient fitness and ability to qualify on the position and should have been awarded said position.

"Mr. Friedlund's record in the Store Department plainly shows that he is an exceptionally able man and sustains our contention that he is qualified for the position in dispute.

"He was employed on March 26, 1923 as a shop laborer, but in about two weeks, was transferred into the shops to assist a mechanic in the repair of gasoline motor cars. On May 17, 1923, because of his knowledge of mechanics, he was transferred to the position of chauffeur in the lumber yard. For more than three years he worked in this department, where he operated and kept in repair three tractors used in moving loads of lumber from the lumber yard to the mill.

"In 1926 he was transferred to the storeroom where he operated both Ford and Chevrolet trucks until 1932. In the Fall of 1932, he was assigned to the position of work foreman, which position he still holds.

**OPINION OF BOARD:** This case involves wholly a question of fitness and ability. The junior man awarded the position of crane operator had some experience on the position while the petitioner, who is senior, merely thinks he could operate it if accorded some instructions and practice; quite possibly he could but the carrier is under no obligation to assume this hazard when it has available a known qualified man. It is not a question of relative qualifications; the man awarded shows actual qualifications; the petitioner mere potentiality.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 evidence fails to sustain the claim.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Ill., this 24th day of March, 1938.