

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Harris L. Danner, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"1. The Carrier failed, and subsequently refused, to comply with the agreed upon understanding to cover the exercise of seniority rights of employees involved in and affected by the change in the method of rendition of car record reports and train statistical work.

"2. The Carrier failed to properly bulletin the positions of key punch machine operators, created March 1st, 1938, in accordance with the seniority rules of the Clerks' Agreement.

"3. The Carrier failed and refused to permit employees to exercise seniority or displacement rights to positions of key punch operators.

"4. The entrance into service of non-employees on these positions of key punch operators shall not serve to establish seniority rank or rights under the rules of the Clerks' Agreement.

"5. Rates of positions of key punch operators shall be established at \$4.96 per day, retroactive to March 1st, 1938.

"6. Said positions shall now be bulletined and assigned to employees in Car Records and Disbursements offices in accordance with agreed upon understanding referred to in Item 1 above.

"7. All employees adversely affected by the actions of the Carrier shall be reimbursed for monetary loss sustained."

EMPLOYEES' STATEMENT OF FACTS: "On March 1st, 1938, the Carrier changed its method of keeping records incident to car accounting and certain train statistical work by installing key punch machines, tabulating and sorting machines, which machines performed the identical work formerly performed by clerical employees whose positions were rated from \$4.47 per day to \$7.87 per day.

"The representatives of the Brotherhood were advised during November 1937 of the proposed change and conferences were held for the purpose of deciding upon the proper application of the seniority rules of the agreement, inasmuch as there was involved the seniority rights of employees within two separate seniority districts; and a special agreement, as provided for in Rule 22-E, was necessary. After considering all angles of the case, an agreement was finally reached on November 29th, 1937, to cover the par-

rebulletining positions under different circumstances than existed when the vacancies thereon occurred or the positions were created; (7) It is not responsible for its employees lack of ability, nor for their failure to acquire such ability, and is not liable to any such employees in any amount for their inability to perform specific service; and it asks that this Board so hold.

"Oral hearing before the Board is desired."

There is in evidence an agreement between the parties bearing effective date of October 1, 1925.

OPINION OF BOARD: Various inconsistencies appear in the voluminous record in this matter. On account of the volume of matter contained in the record, as hereinbefore set out, we believe that a short statement of some pertinent facts will give clarity to the opinion.

Prior to March, 1938, certain records of the respondent were handled partly by clerks and machine operators, but mostly through manual operations. Thereafter, part of the work was performed by Powers key punch machines, which prepared a final card report instead of the records formerly kept in books. The method of pre-coding and punching cards and the calculation and maintenance of various records by use of punching, sorting, tabulating and calculating machines, is a comparatively new method of handling such work. The operation of such machines requires special training and experience. The establishment of the system involved herein caused to be created new positions, and caused the transfer of old positions. The transferred and newly created positions were filled in accordance with agreement rules by clerks and machine operators who were already in service and by new operators of the punch machines who had the necessary fitness and ability (except the position of one key punch operator). Seven of the key punch positions were filled by new employees. We cannot tell from the record whether one of the key punch positions was filled by an employee already in the service as a comptometer operator or by a new employee. All of the positions created as a result of installing the new method are controlled by the terms of the clerks' agreement. This agreement imposes upon the respondent the duty of advertising new positions, the observance of seniority rights and the relative seniority standing of the employees in the awarding of positions.

It will not be necessary to discuss items 5 and 7 of the claim, inasmuch as it is conceded that these items should be remanded for negotiation as to the proper rate of pay as of March 1st, 1938. The other items of the claim will be discussed generally.

The employees base their argument mainly on the proposition that the correspondence passing between the carrier and the employees constituted an agreement to the effect that the positions of key punch operators would be filled from the ranks of presently employed clerks, and that the positions of key punch operators were not properly bulletined and that by reason of this correspondence and by reason of improper bulletining of positions, the employees should be reassigned.

We cannot agree with this contention.

The carrier contends that this correspondence did not require it to fill the positions unless the occupant had sufficient fitness and ability to meet the qualifications required on the position sought. The carrier claims that the correspondence in its essentials, was only meant to "determine the particular group of employees who were to be considered as eligible to apply for the newly created positions resulting from the consolidation of work as previously performed * * *." There is no rule cited which requires the carrier to train employees at the expense of the carrier. There is considerable matter in the record which shows that the carrier was willing

to train the employees, but that the training would have to be on the time and at the expense of the employee. The nearest approach to a rule requiring the giving of training is Rule 10:

“Failure to Qualify—Rule 10. Employees awarded bulletined positions will be allowed thirty (30) days in which to qualify, and failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.”

However, this rule does not go to the extent of compelling the carrier to train an employee for an entirely new position, as shown by the facts in this case. The successful operation of the business of the carrier must necessarily allow the freedom to decide whether the employee has the necessary qualification for the position, and the judgment of the carrier should not be interfered with unless it is shown that the judgment was the result of bias, prejudice or excessive arbitrary action.

The principles involved in Award No. 1147 are applicable here:

“The applicable rules of the Agreement governing the exercise of seniority embrace fitness and ability, as well as seniority, as a relevant consideration. Only when there is sufficient fitness and ability is it provided that seniority shall prevail. In these circumstances a lack of adequate fitness and ability on the part of the applicant would clearly constitute a valid ground for the carrier's departure from seniority. Even on the assumption that the rule dealing with ‘time in which to qualify’ (which by its express terms, refers only to ‘employees entitled to bulletined positions’) should be deemed to be applicable to such displacements of junior employees as are here involved, it would be necessary to establish the existence of reasonably sufficient fitness and ability before the obligation would attach to the carrier to afford an opportunity to the applicant to qualify for the positions.

“Under these requirements of the agreement the carrier was under no compulsion to permit the claimant to displace the junior employees; and since the evidence of record does not disclose any abuse of discretion on the part of the carrier in concluding that the claimant did not possess sufficient fitness and ability, there was no violation of the Agreement. The positions involved have been clearly shown to require substantial training and experience of a technical character, and at the time of the claimant's applications his training and experience, in their bearing upon the duties of the positions, were so limited as to afford ample support for, and in the opinion of the Board fully to justify, the judgment of the carrier that the claimant did not possess sufficient fitness and ability for the positions. In these circumstances there was no violation of the Agreement, and no obligation thereafter rested upon the carrier to provide qualifying tests for the claimant. The proposals and counter-proposals for such qualifying tests disclosed of record never matured into agreement of the parties, and hence this aspect of the proceeding provides no ground for altering the conclusion reached on the basis of the rules of the Agreement.”

Items 2 and 6 of the claim will be discussed together. The record discloses that the carrier did, on the 1st day of March, 1938, post notices of the abolishment of certain positions, and gave notice to employees that the above positions were subject to bid. The record also shows that various employees bid on these positions. The record also shows that the positions were not filled by the employees so bidding, the carrier assigning as a reason that the bidders did not have sufficient fitness and ability for the position or experience as key punch operators.

It is apparent from the record that the respondent attempted by notices and bulletins to give the employees notice of the special conditions confront-

ing the carrier and employes, and endeavored to acquaint the employes of the necessity of having necessary ability to operate a key punch machine. It is true that some of the notices or bulletins are technically incorrect. However, it cannot be contended that the bulletins failed to have the designed result for the employes involved recognized them as bulletins and submitted their bids for the positions offered by the bulletins. Inasmuch as the affected employes submitted their bids in accordance with the bulletins, they should not now be heard to complain and require these positions to be reassigned after a lapse of two years. The record does not disclose whether the affected employes have at this time the requisite skill and ability to operate the key punch machine. The present occupants of these positions have established their right to such positions subject, of course, to the seniority rights in conformity with the agreement.

These new employes are junior in seniority rights to all other employes appearing on the clerks' and machine operators' seniority list and when any reduction in force or displacements take place, they will be subject to displacement from their positions and from the service by any senior employe who has sufficient fitness and abilities to perform the duties of key punch operator.

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 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 petitioner is not entitled to an award under Items 1, 2, 3, 4 and 6 of the claim; that Items 5 and 7 of the claim should be remanded.

AWARD

The claim is denied as to Items 1, 2, 3, 4 and 6, as indicated in the Opinion and Findings; the claim under Items 5 and 7 is remanded to the parties for negotiation as to the appropriate rate of pay as of March 1st, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1940.