

Award No. 1588
Docket No. TE-1556

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Lines that E. J. Matteson, the senior applicant for the Riverbank, California, agency, which was advertised as vacant on Bulletin No. 18, dated June 20, 1939, but who was denied the assignment, be now assigned to the Riverbank Agency and reimbursed for the difference between what he has earned as Agent at Hanford and what he would have earned as Agent at Riverbank from the time that assignment was filled under Bulletin No. 18 until he is placed as Agent at Riverbank."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute. Copies thereof are on file with the National Railroad Adjustment Board.

"Superintendent Simpson's bulletin No. 18 dated Fresno, California, June 20, 1940 advertised for bids, the Riverbank, California agency position, rate of pay \$262.17 per month; the closing time and date stipulated as 8:00 A. M. June 28, 1940.

"E. J. Matteson, the senior bidder, then occupying the Hanford, California agency, with eight employes under his supervision, and with a seniority date of May 27, 1911, was not assigned to the bulletined vacancy.

"S. A. Parsons, then occupying the agent-telegrapher position at Pinole, California (a one-man station), with a seniority date of March 5, 1913, also bid for the Riverbank agency and was assigned to it.

"Riverbank is considered a freight sub-terminal, one switch crew is ordinarily assigned there. The station force consists of eight persons. The yard, as well as the agency, is under the supervision of the agent."

POSITION OF EMPLOYES: "The background and/or history is that E. J. Matteson has a seniority date of May 27, 1911 and has for the most part occupied important agencies on the Valley Division, viz., Hanford, his present location since July 1931, prior to that (1922-1926) at Fellows in the heavy oil producing territory, the years 1921, 1927 and 1929 at Seguro in the oil region. One year (1928) he occupied the Angiola agency.

"In 1931 when Mr. Matteson bid on the Hanford agency, he was called into Mr. Fluhr's (then superintendent) office and was told he should withdraw his bid for the reason that he, Mr. Fluhr, had a younger employe, in point of seniority, slated for the job. At that time Mr. Matteson requested

The decision that Matteson did not possess sufficient ability and qualifications was made without bias or prejudice, and it cannot be said that there was any evidence of a desire to evade the intent or spirit of the schedule rule. Again in Award 96 (Docket CL-124) we find:

‘... Seniority cannot be applied irrespective of fitness and ability. the latter elements are of very great importance to the carrier.’

The attention of the Honorable Board is also directed to the following which is found in the ‘Findings’ in Award 346 (Docket TE-191), rendered by this Division with the assistance of Referee Willard E. Hotchkiss:

‘... The spirit and letter of the agreement contemplate that when a vacancy occurs senior employees will be given consideration ahead of junior employees and that the highest available person on the seniority roster will be assigned if qualified. However, the agreement does not contemplate that a person will be assigned whose record does not indicate a capacity for increased responsibility commensurate with the requirements of the position to be filled. It is not within the purview of the agreement, nor is it a function of this Board under the Amended Railway Labor Act to compel appointment of a senior employee who is lacking in necessary qualifications.’

(Underscoring supplied.)

“Careful consideration of the facts and circumstances involved in this dispute can only result in the complete denial of the Employes’ claim.”

OPINION OF BOARD: The question is whether or not Matteson, the agent at Hanford, should have been assigned to the agency at Riverbank as the senior bidder.

The employes in handling the case with the carrier relied upon paragraph (g) of Article XX, which provides as follows:

“(g) When an employe is assigned to a position by bid and after a fair trial is found incapable of filling the position, he shall be transferred to the extra list but will retain his seniority rights.”

Under this paragraph the employes contended that the senior bidder was entitled as a matter of absolute right to be assigned to the position and to be given a fair trial at it.

The carrier has been correct in maintaining that there is no obligation to assign an employe to a position under paragraph (g) unless under paragraph (b) his “ability and qualifications are sufficient.” Paragraph (b) reads as follows:

“(b) Employes will be in line of promotion to positions covered by this schedule and, where ability and qualifications are sufficient, seniority will prevail. Employes declining promotion do not forfeit seniority rights.”

In other words, paragraph (g) only takes effect after the requirements of paragraph (b) have been met. This interpretation is the natural one, and the principle has been upheld under similar rules in a number of awards by this Board—e. g.: Award 1147.

The principle has also been repeatedly laid down by this Board that in determining whether “ability and qualifications are sufficient” the decision of the management should prevail unless it is shown to have been arbitrary or biased or carelessly exercised in disregard of the spirit and intention of the Rules.

The record as it now stands may be summarized as follows:

1) There is considerable evidence to indicate that Matteson, the claimant, in a number of instances stretching over some twenty years has been careless in his work; he has been described by officials of the carrier, upon several

occasions when no questions of promotion or assignment were at issue, as lacking in initiative. On the other hand, there appear to have been no complaints against him during the last half of the ten years in which he has been in charge of the Hanford agency.

2) The carrier asserts that the agency at Riverbank, while less important from a revenue standpoint than Hanford, calls for more extensive and responsible duties on the part of the agent. The station force, like that at Hanford, consists of eight persons, but Riverbank is also a freight terminal, which Hanford is not, and the carrier states that a switch crew is ordinarily assigned there; that freight train crews go on and off duty there; and that the agent receives a monthly salary of \$262.17—one of the highest, if not the highest, on the Division—covering all services which may be required, of whatever nature and at whatever times.

3) If there were nothing more to the case, we should be disposed to conclude that, in view of the apparent importance of the new position and the deficiencies disclosed in Matteson's record, and in the absence of any evidence of bad faith or careless disregard of the Rules, the judgment of the carrier regarding the insufficiency of Matteson's qualifications could not properly be interfered with by this Board.

4) The record shows, however, that Parsons, the man assigned to the position at Riverbank, whose seniority dated from 1913, as compared with 1911 in the case of Matteson, had spent the last eleven years in charge of a one-man station at Pinole, a small point not comparing in importance with either Hanford or Riverbank. This fact is significant in two respects: (a) it casts some doubt upon the alleged importance of the position at Riverbank; (b) it lends some color of plausibility to the employes' charge of bias by the officials in the treatment of Matteson—a charge which otherwise is without substantial support in the record. In other words, the qualifications of Parsons are pertinent to this case, not because Article XX requires the carrier to demonstrate that one man's capacity is superior to another's, but simply because so great a difference as is here shown between the apparent experience of the two candidates raises doubts about the importance of the position in question and the good faith of the carrier in selecting the candidate with the lesser experience and the lesser seniority.

5) Unfortunately, the carrier has nowhere attempted to clear up these doubts by describing in more detail the background and qualifications of Parsons in the light of the duties to be discharged at Riverbank. The importance of these duties in comparison with those at Hanford might also have been more fully and specifically explained. On the other hand, since the employes from the beginning mistakenly took the view that Matteson was entitled under Article XX (g) to a trial at Riverbank, regardless of whether or not his qualifications were "sufficient" under paragraph (b), the carrier was not squarely charged with the necessity of meeting in full detail the latter issue.

Under all the circumstances, we think that the case should be remanded for further handling in the light of the interpretation herein placed upon Article XX. The carrier should submit all pertinent information to the employes touching the matters discussed above, and both parties should make a further effort to dispose of the case by agreement. If it cannot be so disposed of, it may be re-submitted to the Board with the additional evidence needed to enable the Board to reach a final conclusion. The carrier should submit this additional evidence to the employes within 60 days, unless otherwise agreed by the parties.

This opinion is not to be taken as holding that, if the senior bidder's qualifications for a position were not sufficient, the carrier must demonstrate that the qualifications of the man finally selected were sufficient. If A is unqualified for a position, he acquires no rights to it simply because B also turns out to be unqualified. All that we here hold is that under certain cir-

cumstances such as are here presented, an extreme disparity in experience between A and B may raise doubts regarding the propriety of the carrier's exercise of discretion.

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 employe involved in this dispute are respectively carrier and employe 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 Article XX (g) has not been violated and that the record is insufficient to determine whether or not there has been a violation of Article XX (b).

AWARD

Case remanded for handling in accordance with this opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1941.