

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(1) That the carrier violated the Clerks' agreement when on August 14, 1941, it assigned B. Frank Hendricks to a vacancy covered by Bulletin No. 1486, in the General Accounts Bureau, New York and declined to consider the application of J. J. Nolan, the senior employee.

(2) Mr. J. J. Nolan be assigned to the position described in Bulletin No. 1486 and compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: On August 1st, 1941 Mr. A. G. Robrecht was placed on a newly created position in the General Accounts Bureau, 143 Liberty St., New York, and the vacancy thus created was bulletined (Exhibit "A") in accordance with the provisions of Clerks' Agreement, on August 8, 1941. The position was awarded to Mr. B. Frank Hendricks with a seniority date of December 5, 1919 (Exhibit "B"). Applications for the position were submitted by:

J. J. Nolan	Seniority date	Feb. 9, 1916
E. D. Harrington	" "	Mar. 4, 1918
F. C. Sheridan	" "	Mar. 15, 1918
W. R. Trested	" "	June 15, 1918

Applications from these employees were disregarded and Mr. Bayfield requested each of them to furnish a list showing their qualifications, despite the fact that each of the applicants have in excess of twenty (20) years service. This, the Committee claims, is a subterfuge and was for the express purpose of denying them the position. The Committee advised the applicants not to comply with Mr. Bayfield's request in view of their length of service in his department. Their work spoke for itself.

POSITION OF EMPLOYEES: There is in effect an agreement between the parties bearing effective date of March 1, 1939 from which the following rules are quoted:

Rule No. 37—Seniority Rights: "Seniority rights of employees covered by these rules to new or vacant positions, or to perform work covered by this agreement, will be governed by these rules."

This rule establishes the right of employees to perform work on vacancies and new positions on the basis of seniority.

were two applicants, one the junior in service, with seventeen years' experience on the identical position, and the other senior to the first, but with absolutely no experience in that class of work.

There was no violation by the carrier of the Clerks' Agreement in filling this position. The claim is not supported by the evidence and should be dismissed.

OPINION OF BOARD: From a reading and study of the statements of fact and positions of the respective parties to this dispute it becomes apparent that the principal issue is that the Carrier was biased in its appointment of Hendricks, and did not act in good faith in refusing Nolan the position, hence violated Rule No. 39.

Employees, for the purpose of showing bias seek to rely on the record in Docket No. CL-1893, Award 1887 wherein we found that there was discrimination against the claimant in that case, but a reading of that record as well as the award shows that there is no basis for the deduction that the discrimination there was general against all those who were on the other seniority districts prior to the consolidation with the New York District. The most that could be claimed is the conjecture that because the appointment in that case came about the same time as the appointment here that the discrimination might relate to both. Cases before this Board can not be based on conjecture.

Another reason why this claim might be properly denied is claimant's refusal to co-operate with the Carrier in his efforts to get the job. The Management's personal request of Nolan for a statement of his qualifications was a reasonable one, and it is not unfair to say that his refusal could be construed by the Management as an admission of the inadequacy of his qualifications. Refusal to submit to an examination has been held by this Board to be grounds for denying a claim. Award No. 82. Rule 50 (d) in the Agreement before us requires co-operation.

It might also be mentioned that Nolan wanted to attach a condition to the position if it was awarded to him. That may not be very persuasive but it is an element the Management had a right to consider.

Finally it may be said that the Management did not err in finding that Nolan's qualifications were inadequate for this particular job.

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 Carrier has not violated any of the rules of the Agreement and the claim (1 and 2) is therefore denied.

AWARD

Claim (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1942.