

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that The Ogden Union Railway and Depot Company violated the terms of the existing agreement:

(a) In its refusal to pay Mr. F. F. Lindsay the established rate of the Interchange position for the date of May 2, 1943, after he had exercised his seniority by displacement and reported for and worked the position; and

(b) The company shall now be required to pay Mr. F. F. Lindsay at the schedule rate of the Interchange position, \$7.25, for May 2, 1943.

EMPLOYEES STATEMENT OF FACTS: Mr. F. F. Lindsay, clerk, established seniority on the Yard Office roster of the Ogden Union Railway and Depot Company October 14, 1939.

By operation of the schedule provisions between this Brotherhood and the Company, Mr. Lindsay was displaced from his position by a senior employee, whereupon, and prior to May 2, 1943, he gave proper notice under the schedule to the proper officer of the Company to displace a junior employee who was assigned to the Interchange position.

Mr. Lindsay had previously worked the Interchange position in the Yard Office, however, he was notified by the Assistant Chief Clerk he must spend one day in which to fully qualify himself before taking over alone on the position. This one shift to be without pay by the Company. Mr. Lindsay, of course, did as instructed and filed time card claim for one day's pay for the service on date of May 2, 1943.

On May 3, 1943 and thereafter Mr. Lindsay took over all duties and responsibilities of the position and worked them to the complete satisfaction of the Company.

Time card for service on May 2, 1943 was declined by the Company on May 8, 1943.

POSITION OF EMPLOYEES: There is in existence between the parties an agreement, made effective October 1, 1942, in which are the following rules:

claimant's contention that he was entitled to the position by reason of seniority is without merit."

In your Board's Awards 2638 and 2673, Referee Curtis G. Shake participating, the contention that senior applicant was entitled to the position was considered and we quote the following from Award 2673:

"In Award 2638 we said that an employe otherwise entitled to exercise seniority for a position has the burden of establishing that he possesses reasonable fitness and ability; that his past record may be sufficient to create a presumption of such fact; that where this is true the burden is upon the carrier to show that such past services were unsatisfactory as of the time rendered; and that the carrier's action in so determining is subject to review for an abuse of discretion."

In summary, it is the carrier's position that "seniority," "fitness," and "ability," constitute the elements of eligibility under the rules and operative at the time the assignment is made. Further, that in relaxing the literal requirements and assigning the senior employe and permitting him to qualify, for reasons explained in fore part of our position, the benefits flowing therefrom were shared by the employes, and gives no valid support for the claims for pay while breaking in. Finally, it is the carrier's position that there is no support in any rule for the theory of "potential" fitness and ability which is the basic and real issue brought into dispute in these cases.

OPINION OF BOARD: The Claimant was displaced from his position as Manifest Clerk and sought to displace a junior employe on the position of Interchange Clerk. He was assigned to the position and required to qualify on his own time. This he did by working the position on May 2, 1943, with a qualified Interchange Clerk. The Organization contends that Claimant had the fitness and ability to fill the position at the time it was assigned to him and that he should be compensated for the day spent in qualifying.

The record discloses that Claimant had previously filled the position of Interchange Clerk for twelve days during June and July, 1942. No complaint was made of his work on the Interchange Clerk position and we must conclude that it was satisfactory. That his position as Manifest Clerk required higher qualifications than that of Interchange Clerk is not disputed. The Carrier contends that it was justified in requiring Claimant to qualify on his own time because he acknowledged that he was not abreast with all current details of the position. We think the Carrier attaches too much importance to his statement. It would be true as to any employe returning to a position which he had formerly filled. The record shows that Claimant was instructed not to exceed thirty minutes during the day and was given full responsibility for the position the next day.

We are in full accord with our announced rule that the successful operation of the business of the carrier requires that it decide whether an employe has the necessary qualifications for a position and that the judgment of the carrier should not be disturbed unless such judgment was the result of capricious or arbitrary action. Awards 2490, 2615 and 2673. It seems to us that the Claimant was sufficiently qualified to take over the position when it was assigned to him. The fact that an experienced Interchange Clerk assisted him for so short a period and that he has performed the duties of the position satisfactorily since confirms our position. We think the evidence conclusively shows that the Claimant was required to consume one day in qualifying as an Interchange Clerk when he was already qualified to assume the responsibilities of the position. This constitutes capricious and arbitrary action within the meaning of the rule.

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 Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 31, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the current Agreement as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1946.