

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Agreement when it assigned J. A. Morrow, C. A. Thorpe and E. L. Koch to positions in the Government Bureau, Office of the Auditor of Freight Receipts, 63rd Street, Chicago, covered by assignment bulletin No. 145 and failed and refused to consider senior applicants:

W. A. Giesecke
J. B. Barrett
A. O. Levin
W. L. Murphy
D. R. Hansen
H. F. Majeske
D. J. Evans

J. Coleman
H. W. Pridgen
H. E. Guild
R. T. Marshall
John Habas
R. R. Porterfield
H. H. Tepper

2. Messrs. W. A. Giesecke, J. B. Barrett, A. O. Levin and all other employees involved or affected by this Agreement violation be compensated for wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: On August 1, 1944 Messrs. J. A. Morrow and C. A. Thorpe represented as being Auditors from the Office of Genl. Auditor began to perform original schedule clerical work of land grant formula clerks in the Government Bureau in office of Auditor of Freight Receipts, 63rd Street, Chicago, without the positions being bulletined as new positions. They were actually non-employees and were placed in this bureau to perform work belonging to employees covered by the agreement.

The Auditor of Freight Receipts was off sick and his Assistant Auditors were in charge. After complaint was lodged by the membership through the Protective Committee a conference was arranged for August 2, 1944 between the General Auditor, the Asst. Auditors and the Local Protective Committee of the Brotherhood. At this meeting it was agreed to place six land grant formula clerk positions rate \$8.72 per day (and four other positions at 8.72 per day on which no dispute exists) making ten positions in all on bulletin board for bidding by employees.

Application for the ten positions numbered 1207 to 1212 and 485 to 488 inclusive at \$8.72 per day were submitted by thirty eight applicants with seniority dates as listed:

1. The Carrier acted in accord with the interpretation and application of the applicable rules effective on this property since 1922.

2. Carrier's action is in accord with this Board's interpretation of same and similar rules on other properties where the contextual obligations and implications were of the same or like effect.

3. Messrs. Koch, Morrow and Thorpe possessed the sufficient fitness and ability required by Rule 6. The employees have presented no evidence to the contrary, they do, in fact, virtually admit the sufficiency of the fitness and ability of these employees for the disputed positions.

4. No other applicants possessed sufficient fitness and ability for the six (6) positions of land grant formula clerks, the assignees awarded the three (3) other land grant positions possessed less than sufficient fitness and ability therefor but were, even so, more nearly possessed of sufficient fitness and ability than any other applicant, having some knowledge of land grant formulae and their application whereas the other applicants had no such knowledge.

5. The employees present no evidence of the sufficiency of the fitness and ability of any claimant. In order to be sufficiently fit and able an applicant was required to have a complete knowledge of and experience in applying land grant formulae to government bills. None had this but the Carrier's selectees.

6. The Carrier acted in good faith and conscience in considering all applications individually and separately in the presence of employee representatives in open forum. The employee representatives offered no protest at the time the selections were made and the reasons therefor discussed. No claim can now be heard that the Carrier was arbitrary, capricious, unreasonable or otherwise acted contrary to the precepts of honesty and forthrightness or failed to consider any applicant.

7. Carrier offered to put on other positions of land grant formula clerks if and when other employees qualified for them. The employees have never, since the offer was made, requested these positions be established. The conclusion is justified they do not consider any other employees sufficiently fit and able.

8. The Railway Labor Act (1) preserves the right of the carrier to self-organization and precludes employees from interfering therewith, and (2) requires authorization from each claimant to Brotherhood to settle, compromise or waive claims in their behalf.

The Carrier requests, on the basis of its Statement of Facts and supporting argument, that its position be sustained as the proper interpretation of the involved rules of the effective agreement and the employees' claim denied without qualification.

OPINION OF THE BOARD: Because of an increase in the work of billing the Government for freight charges, it was necessary for Carrier to create a number of new positions. An agreement was entered into between Brotherhood and Carrier on August 3, 1944, under which twelve new positions were to be established. Two of these were not to be bulletined, and were admittedly filled without regard to seniority. The remaining ten positions were bulletined in accordance with the Agreement. No complaint is made in regard to the assignments of seven of these positions, but the claim here is based upon the alleged improper assignment of positions No. 1210, 1211 and 1212, which were awarded to E. L. Koch, J. A. Morrow and C. A. Thorpe, respectively. Koch held seniority date as of July 20, 1926, but Morrow and Thorpe were new employees and had no seniority rights.

In resolving this claim, the agreement above referred to, together with Rules 6 and 9 of the Agreement, are particularly pertinent.

Rules 6 and 9 read as follows:

"Rule 6. 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."

"Rule 9. Employees awarded bulletined positions and failing to qualify within thirty (30) days, shall retain their seniority rights and may bid on any bulletined position, but may not displace any regularly assigned employee."

It is the contention of Brotherhood, with reference to Koch that he was junior in seniority to other employees who bid on the positions and who had sufficient fitness and ability and therefore should have been chosen. As to Morrow and Thorpe, Brotherhood claims that because they held no seniority, it was a violation of the Agreement to select them over employees who bid on the positions and who had sufficient fitness and ability. Carrier contends that it did not abuse its discretion in selecting Koch, and that as to Morrow and Thorpe, it asserts that it appears that none of the bidders for the positions here involved, had sufficient fitness and ability because of a lack of experience in land grant work, and that because of the experience of Morrow and Thorpe in this type of work, Carrier was justified in selecting these men.

It appears that the employees who held seniority had considerable experience in the handling of commercial shipments, but Carrier claims that there is a great deal of difference between the accounting involved in the handling of commercial shipments and that of land grant shipments. Virtually what the contention of the Carrier amounts to is that none of the employees bidding on the positions had the requisite experience. But Rule 6 does not require experience before an employee can bid for new work. If that were the case, it would be practically impossible to secure employees for new positions. The rule requires fitness and ability. The fact that under Rule 9, there is a thirty day qualifying period, indicates that employees may not have experience in new work, and yet are given the opportunity to qualify to determine if they measure up to the standard of fitness and ability.

When the agreement of August 3, 1944 was made, Carrier was aware of the fact that the experience of the employees who were to bid on the positions was limited to the commercial traffic and that they had no experience in land grant work. Its records indicated that. Knowing this, that was the time for Carrier to have insisted upon the right to secure this additional help, or a part of it, from employees who had the experience in land grant work, but no seniority. When Carrier agreed to bulletin the positions, it cannot now with good reason take the position that the employees lack sufficient fitness and ability because of no experience in land grant work.

As to Koch, we believe that Carrier acted well within its discretion in assigning him to the position.

As to Morrow and Thorpe, we conclude that the Agreement was violated in not assigning two senior employees who bid on the positions.

The claim for reparation should be sustained for the two senior claimants to October 15, 1945, when Thorpe's position was abolished, and for the senior claimant thereafter until the violation is corrected.

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 21, 1934;

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

That as to Morrow and Thorpe Carrier violated the Agreement.

AWARD

That the two senior employes herein who bid on Positions 1211 and 1212 be assigned to these positions and that the claim for reparation be sustained for these two claimants to May 1, 1945, when Giesecke was granted an equal rate of pay, and to the next two senior claimants named herein to October 15, 1945, when Thorpe's position was abolished, and for the senior claimant thereafter until the violation is corrected.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1946.