

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**

TENNESSEE CENTRAL RAILWAY 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 Carrier violated the Clerks' Agreement:

(1) When on June 19, 1944 the Carrier assigned Mrs. Mildred L. Buffat to position of Interline Freight Clerk, Desk 11, (in Auditor's Office, Nashville, Tenn.), per bulletin of that date and bearing as designation, "File 4804" and declined to properly consider or refused to properly consider the application made by Miss Mamie Harris, the senior employe, and

(2) That Miss Mamie Harris be assigned to the position described in Bulletin dated June 15, 1944 bearing designation "File 4804" and be compensated for all monetary loss sustained, and that all employees involved by the Carrier's failure and refusal to comply with the terms of the Clerk's Agreement be compensated for any monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: On June 15, 1944 the position of Interline Freight Clerk, Desk 11, in the Auditor's Office, Nashville, Tenn., rate \$125.80 per month, was advertised as vacancy per Auditor J. T. Terry's Bulletin reading:

"Nashville—June 15, 1944
File 4804

CLERICAL EMPLOYEES,

Seniority District No. 1:

Because of her qualifications as an experienced Comptometer Operator, Mrs. Sophia Turner is assigned to the position of Comptometer Operator, Desk No. 21.

The position of Interline Freight Clerk, Desk No. 11, being vacant due to such assignment, same is hereby bulletined.

Salary of position, \$125.80 per month.

Bids will be received until 4:30 P. M., Friday, June 16th, 1944.

J. T. Terry,
AUDITOR.

2 B/Cys—Mr. R. E. Horton, Chairman,
Clerks' Committee."

The Dissent to Award 1889 cites several awards of your Board which, quoting from the Dissent, "had held, in brief, that unless there was evidence of bias or prejudice this Division could not substitute its judgment for that of the Management, and that initial action in choice of personnel is a prerogative as well as a duty and responsibility of Management, in respect to which this Division is not vested with authority to substitute its judgment."

It is also observed that the Opinion in Award 1889 refers to Award 1888, Referee Bakke, in which award claim was denied for the reasons that absence of good faith on the part of the carrier was not shown and refusal of claimant to cooperate with the carrier in his efforts to get the job; and it is further stated in the said Opinion that refusal to submit to an examination has been held to be grounds for denying a claim.

The Opinion in Award 2427, Referee Johnson, discusses distinction between the question of whether applicant in that case had fitness and ability for the position and the question of whether he was immediately qualified to assume the duties of the position. There is nothing in that Award from which it could be inferred that lack of skill in the operation of a comptometer, typewriter, taking of dictation, or in other specialized requirements could be construed as other than insufficient fitness and ability for a position requiring a substantial amount of such service.

Opinion in Award 2534, Referee Blake, states, "It appointed Stephenson simply because it considered him, by reason of his past experience, **better qualified** for the position than claimant." In the instant case before your Board it was the sound judgment of the carrier that claimant lacked sufficient fitness and ability. Also, a qualification rule of the character referred to in Award 1889 was quoted in the Opinion, whereas no such rule is contained in the agreement with employees on this property.

Rights to positions under the agreement and in accordance with the agreement are not based on seniority alone, but on seniority, fitness and ability, and fitness and ability must be sufficient whereupon seniority prevails. The carrier gave full consideration to all these factors in making the assignment complained of in this case.

The claim of the employees is in default under the time limits prescribed in Rule 18; and further, the claim on its merits is not supported by the rules of the government agreement. The carrier, therefore, respectfully requests that it be denied.

OPINION OF BOARD: On June 15, 1944, the position of Interline Freight Clerk, Desk 11, in the Auditor's Office at Nashville, Tennessee, was bulletined for bid. The Claimant applied for the position but it was given to an employee junior in point of service. Claimant asserts that she should have been assigned the position and claims the compensation lost by the failure of the Carrier to assign her the position.

The decision must necessarily be based upon the interpretation of Rule 7 of the current Agreement and a proper application of it to the facts in the case before us. Rule 7 provides:

"Rights to positions shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

Under such a rule, the determination of the fitness and ability of an applicant is primarily the responsibility of the Carrier and it is only in those instances where it can be shown that the Carrier's action was influenced by bias and prejudice or an arbitrary and capricious purpose to circumvent the Agreement, that a claim that the Agreement has been violated can be sustained. We cannot substitute our judgment for that of the Carrier in matters of this kind,—our function is limited to a review of the Carrier's decision to ascertain whether it was made in good faith upon sufficient supporting evidence or whether it was the result of capricious or arbitrary action without reasonable support in the record before us.

Under the rule presently before us the only question for consideration is whether the Claimant was qualified,—if she was, the position should have been given to her; if she was not qualified, no basis for a sustaining award exists.

The record shows that Claimant entered the service of the Carrier on August 21, 1943. The dispute centers largely on whether the Claimant was qualified to operate a comptometer sufficiently to carry out the duties of the Interline Freight Clerk. Claimant had never had more than casual experience in operating a comptometer before her employment by this Carrier. During the ten months she was with the Carrier before bidding for the position in question, she was not required to operate a comptometer. Her application for employment filed with the Carrier shows that she was experienced as a typist and bookkeeper, no mention being made of any ability to operate a comptometer.

The Carrier contends that the operation of a comptometer constitutes approximately 50 percent of the duties of the Interline Freight Clerk. Claimant knew that the operation of a comptometer was a part of the duties of this position. It is evidenced by the fact that she voluntarily made mention of her qualifications in that respect in her application for the position. The position she held placed her in close proximity to the position sought so that she undoubtedly knew what the duties of the Interline Freight Clerk were. Claimant concedes that some work on the comptometer is required by the position but asserts that she has the required qualifications to handle the work. There is much other evidence in the record bearing in some degree upon the question for determination. We are inclined to the view that the facts are of such a nature with respect to the qualifications of this employee that we cannot say that the Carrier was acting unfairly, or that it was influenced by bias or prejudice, or that it acted arbitrarily or in a capricious manner in determining that Claimant lacked necessary fitness and ability for the position sought.

It is the function of management to select competent employees. Except where it has limited itself by contract, the right of selection is wholly within the discretion of management. This Board should hesitate to override the judgment of the Carrier on a matter of this kind and risk the inefficient performance of railroad operations. The present case is not one that warrants any interference by this Board with the decision made by the Carrier.

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 there was no violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1946.