

Award No. 3188

Docket No. CL-3074

**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**

**AMERICAN REFRIGERATOR TRANSIT COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the American Refrigerator Transit Company that the Company violated the Clerks' Agreement:

1. When it failed and refused and continued to refuse to permit Mr. J. M. Edwards, a senior employe, to displace Mr. W. A. Brown, a junior employe, on the position of District Chief Inspector at St. Louis, Mo., which rights he sought to exercise effective January 16th, 1945, under the provisions of Rule 10 (a) and related rules of the Clerks' Agreement. The seniority date of Mr. Edwards is July 28, 1923. The seniority date of Mr. Brown is June 24, 1926.

2. When it refused Mr. Edwards the right of trial on the position sought in the exercise of his seniority rights thus denying him the enjoyment and benefit of promotion rights in contradiction to the intent and purpose of a proper application of the provisions of Rule 7, the NOTE defining the meaning of the word "sufficient" comprising a part of the provisions of the rule.

3. That the American Refrigerator Transit Company shall be required to place Mr. Edwards on the position of District Chief Inspector which he sought and accord him a fair and impartial trial, and compensate him for wage loss suffered in the amount of difference in the rate of \$222.00 per month attaching to the position of District Chief Inspector, and the amount he has been paid otherwise retroactive to and including January 16th, 1945.

**EMPLOYEES STATEMENT OF FACTS:** The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees entered into agreement covering rules and working conditions with the American Refrigerator Transit Company effective June 1st, 1944, fifteen copies of the agreement, the employes have been advised, were filed with the National Railroad Adjustment Board by the Company.

Prior to June 1st, 1944, claimant, Mr. J. M. Edwards was the regular assigned occupant of position of "Lead Inspector" at St. Louis, Mo., rate \$193.40 per month. The duties of this position for the most part consisted of:

1. Check and inspect team track daily.
2. Supervise heating and icing of cars and perform such clerical work connected therewith, that is, compiling of proper reports, keeping records, etc.

employees; and since the evidence of Record does not disclose any abuse of discretion on the part of the Carrier in concluding that the claimant did not possess sufficient fitness and ability, there was not violation of the agreement."

In Award No. 1479, Docket No. CL-1587, before your Division, involving claim of the System Committee of the Brotherhood that R. W. Syler was denied the right to exercise seniority displacement rights over a junior employee. The Board is of the opinion the record establishes that the qualifications of the Claimant were not equal to those of the occupant for the position in question, and the claim must therefore be denied.

(1) Summing up this case, the Company does not agree with the contention of the Brotherhood that Rule 10-(a) or 9 contemplates that when an employe desires to displace a junior employe that he must actually be placed upon the position and demonstrate his lack of ability to hold such position before he may be disqualified.

(2) The Third Division has clearly recognized in numerous cases the fact that, as in this dispute now under consideration, there are certain positions within the scope of the Clerk's Agreement which are of a highly specialized nature and which embrace duties that are not ordinary clerical work; therefore, many individuals who may have occupied clerical positions for many years might not be able to handle the duties of such positions. In further recognition of this principle the Third Division held in Award 592 that, the junior employe who was awarded a position had the necessary qualifications, while another applicant who was senior merely thought he could perform the duties of the position if accorded some instruction and practice. The Third Division stated in that Award:

"The Carrier is under no obligation to assume this hazard when it has available a known qualified man. It is not a question of relative qualification, the man awarded shows actual qualifications the petitioner mere potentiality."

The claim of the Brotherhood should be denied.

**OPINION OF BOARD:** On January 15, 1945, Claimant's position of Relief Utility Inspector was abolished. Claimant advised the Carrier of his desire to exercise his seniority rights to the position of District Chief Inspector then held by an employe junior to him. The position was denied him for the reason that he did not have sufficient fitness and ability to warrant giving him a trial on the position. Rule 7 of the current Agreement provides:

"Employes covered by these rules shall be in line for promotion. Promotion, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

"**Note:** The word 'sufficient' is intended to establish more clearly the prior rights of the senior of two or more employes having adequate fitness and ability for the position or vacancy sought in the exercise of seniority.

"Senior bidders when denied bulletined positions or refused the right to exercise seniority over junior employes, will, upon request of the employe or his representative within seven days of date of issuance of assignment notice, be advised in writing by the employing officer the reason therefor. Copy of such notice will be given representative."

The rule providing that employes awarded bulletined positions shall be given thirty days in which to qualify is by reference made applicable to employes exercising seniority displacement rights. The sole question for resolution is: Was the evidence sufficient to sustain the Carrier's decision that the Claimant lacked the fitness and ability to entitle him to a trial on the position sought?

The record shows that the duties of a Relief Utility Inspector consisted chiefly of re-icing refrigerator cars, the ordering of car lot ice, the making of ice bills for ice furnished each car, the making of ice balances and reports on shrinkage, and performing clerical work in the office at 406 Franklin Avenue, St. Louis, Missouri.

The duties of the District Chief Inspector consisted of supervision of the work of inspectors, the contacting of shippers and receivers in connection with perishable shipments, contacting other railroads relative to icing and heating of cars, checking reports, and in all instances the maintenance of good will by the use of tactful and diplomatic methods in dealing with railroad and ice company officials as well as shippers and receivers of perishable freight. It is also his duty to interpret the rules of the Perishable Protective Tariff and to instruct the inspection forces in the application of government orders regulating service charges.

It is evident that there is a material difference in the duties of these two positions although the one has some similarity to the other. The Carrier contends that Claimant does not have the ability to get along with employees under his supervision and that he is lacking in the tact and diplomacy necessary to a proper handling of the position. Four officials of the Carrier, some of whom have known Claimant for a long period of time, concur in this appraisal of the Claimant. Their personal acquaintance with him is a valuable source of information in determining whether he has the personal traits for a position requiring tact and diplomacy in handling the Carrier's business. We do not have the benefit of such evidence on appeal to this Board. While there is evidence in the record consisting of testimonials of fellow employees as to his ability in this respect, there is some evidence that tends to support the Carrier's position. One of the employees recommending him for the position admits a previous altercation with him. While we think that a very close question is presented in this instant case, we are of the opinion that the evidence is sufficient to sustain the Carrier's action. The fact that four officials of the Carrier have concluded that he lacks the essential requirements of the position, although not conclusive, is itself indicative of his inability to obtain the confidence of his subordinates, associates and superiors. There appears to be no evidence of bias or prejudice which manifested itself when the position sought was denied him. The Carrier, of course, is responsible for the selection of competent employees and we will not lightly overturn its judgment in the matter. The rejection of Claimant's application to displace the occupant of the position of District Chief Inspector by virtue of his seniority, seems to have been done in good faith and with the best interests of the Carrier in mind. Such being the case, the Claimant has not made a case that warrants the interference of this Board.

**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 current Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

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