

Award No. 3195

Docket No. CL-3132

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**

ATLANTA AND WEST POINT RAILROAD

THE WESTERN RAILWAY OF ALABAMA

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

(a) The management of the Atlanta & West Point Railroad Company-Western Railway of Alabama violated the Clerks' Agreement when, on January 30, 1945, under Bulletin No. 248, Item 3, is assigned Mr. G. S. Edmondson, effective February 1, 1945, to position of Head Freight Claim Clerk advertised Bulletin No. 246, January 25, 1945, and declined to consider the application of Mr. Grady Hutchison who holds seniority under the Clerks' Agreement as of September 16, 1920, and

(b) That Mr. Hutchison be assigned to the position covered by advertisement bulletin No. 246 dated January 25, 1945, and be compensated for wage loss suffered retroactive to February 1, 1945.

EMPLOYEES' STATEMENT OF FACTS: Mr. Grady Hutchison entered the service of the Atlanta & West Point Railroad Company-Western Railway of Alabama, September 6, 1920 and was employed handling claims in the Auditor's office, the office in which the position here in controversy exists, until November 1, 1936 when he was transferred to the office of Superintendent of Motive Power.

On or about December 15, 1944 Mr. J. F. Gibson, the then Head Freight Claim Clerk, advised the carrier he would leave its service effective February 1, 1945 to accept outside employment, and on or about January 1, 1945 the carrier, totally ignoring its agreement with the Clerks, employed one G. S. Edmondson, then Chief Claim Clerk of the Atlanta Joint Terminal Company, to take over Mr. Gibson's position when Mr. Gibson left, and as evidence of this fact we show as Employees' Exhibit "A" copy of bulletin issued January 12, 1945 by the Atlanta Joint Terminal Company over the signature of its Freight Agent, Mr. C. S. Raven, advertising Mr. Edmondson's position as vacancy, effective February 1, 1945.

On January 25, 1945 Mr. H. E. Judge, Auditor, issued Bulletin No. 246 advertising the position of Head Freight Claim Clerk as vacant effective February 1, 1945, rate \$278.36 per month, and copy of this bulletin is shown as Employees' Exhibit "B." On the same date, January 25, 1945, Mr. Edmondson entered the Auditor's office and worked with Mr. Gibson learning the

will be sustained unless it appears that the action of the Carrier was capricious or arbitrary, which was certainly not the case in this instance. The fact that under Rule No. 1 a large number of positions were excepted from the Clerks' Agreement indicates that it was the intention of the parties that seniority and other rights protected by the Clerks' Agreement were not to affect a position such as the one in question. The Management agreed that the qualifications of applicants were to be considered and the Carrier in the exercise of its managerial judgment is the party charged with making the final choice.

As further substantiating the Carrier's position, your Honorable Board is referred to Award No. 2350 in which the decision was "Claim denied", and to Award No. 2299 in which your decision was "Claim denied."

OPINION OF BOARD: On December 15, 1944, the Head Claim Clerk advised the Carrier that he would resign as of February 1, 1945. On or about January 1, 1945, the Carrier employed one S. G. Edmondson, then employed by another carrier, for the position. The Organization contends that this is a violation of the current Agreement.

The Scope Rule of the current Agreement provides that the position of Head Claim Clerk, it being a position designated as (a), is excepted from certain rules as follows:

"The provisions of Rules 5 (b), 14, 37 and 38 of this Agreement shall not apply to the following Personal Office positions designated (a) and Rules 5 (b) and 14 to those designated (b)."

Under the foregoing rules, Claimant had no right to the position by reason of seniority. His claim is based on the closing paragraph of the Scope Rule reading as follows:

"In filling the above Personal Office positions, preference shall be given employees coming under the provisions of this agreement."

The position is not excepted from the bulletin rule and the Carrier bulletined the position in accordance herewith on January 25, 1946. Claimant bid for the position but it was assigned to Edmondson as heretofore stated.

It seems to the writer after a careful study of the applicable rules that the following constitutes a proper interpretation of their meaning. When the Carrier undertook to fill the position of Head Claim Clerk, it is required to bulletin the position to employees under the Agreement. The Carrier is then obligated to determine the preliminary qualifications of all applicants who apply in response thereto. If there is an applicant who appears to have the necessary qualifications, the Carrier is obliged to give him a trial in the position as against any applicant not covered by the Agreement.

The Organization contends that the Carrier is obligated by the rule to determine the fitness and ability of every employee under the Clerks' Agreement before it can assign a non-employee to the position. We take a contrary view. The Carrier is required to determine the fitness and ability of those employees only who apply for the position before it is at liberty to employ one not covered by the Agreement. The Carrier is bound to prefer an employee over a non-employee only if he applies and has the initial qualifications for the position. Before an employee applicant could properly demand that he be given an opportunity to qualify for a position, he must show that he has reasonable fitness and ability. This seems to be in line with the previous holdings of this Division. In Award 1147, we said:

"Even on the assumption that the rule dealing with 'time in which to qualify' (which, by its express terms, refers only to 'employees entitled to bulletined positions') should be deemed to be applicable to such displacements of junior employees as are here involved, it would be necessary to establish the existence of reasonably sufficient fitness

and ability before the obligation would attach to the Carrier to afford an opportunity to the applicant to qualify for the position."

See also Award 1889.

The determining question therefore is: Did the Claimant have such qualifications as were necessary to require the Carrier to give him a trial on the bulletined position? The Carrier answered this question in the negative. We think the evidence is sufficient to sustain this finding. There is credible evidence in the record that Claimant worked in this same office on a less important position and that the Carrier found it necessary to relieve him from it because of incompetency. Through the intervention of a high official of the Carrier, he was given a position in the Mechanical Department at a reduced rate of pay. He has held this latter position since 1936. The evidence is ample to sustain the Carrier's finding that Claimant was not fitted for the position of Head Claim Clerk in the Accounting Department. No case is presented therefore that would warrant affirmative action on our part.

We agree with the Organization that the filling of the position in the present instance was not properly handled and if an employee having reasonable fitness and ability for the position had applied for it in response to the bulletin issued, the Carrier would be subject to the penalties provided for such a violation. But where, as here, no employee having the qualifications sufficient to require the Carrier to give him a trial on the position applied for, the improper handling results in no prejudice and the infliction of a penalty is not warranted.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute 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 Agreement was not violated as alleged.

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.