

Award No. 3466

Docket No. CL-3423

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Agreement when it assigned Miss Mary Murphy to position of Group Head, Private Car Line Mileage Group, Car Accountant's Office, 63rd St., Chicago, on position advertised on vacancy bulletin No. 7 dated February 12, 1945 and declined to consider application of T. J. O'Connor, the senior employe bidding on this vacancy.

2. That T. J. O'Connor be assigned to the position No. 17 covered by Bulletin No. 7 and compensated for all monetary losses suffered.

EMPLOYEES' STATEMENT OF FACTS: On February 12, 1945, position No. 17, title Group Head, Private Car Line Mileage Group, rate 8.50% per day was advertised on Vacancy Bulletin No. 7 in office of Car Accountant, 63rd Street, Chicago.

The position was awarded to Miss Mary Murphy with seniority date of Sept. 29, 1919. The application of T. J. O'Connor with seniority date of March 18, 1918 was not given proper consideration.

The position of Group Head of the Mileage Group has but few supervisory duties. Those duties are exercised by the Per Diem Dept. Head Clerk, Mr. J. O. Ryan.

There are a number of group head positions in the various 63rd St. accounting offices. They are bulletined positions covered by all rules of the Clerks' Agreement. Up to the time of this grievance there had not been any extraordinary talent required of the successful applicants for such positions. About all that was required was a little cooperation by all concerned for bidders on such positions to qualify.

Mr. O'Connor was the senior bidder and has had wide experience as a clerk on the I. C. System and has qualified on all previous positions held by him.

He worked in 1913 as a yard clerk for the Wabash railroad. During period 1914 to 1918 he worked in the office of Auditor of Freight Receipts at 63rd Street as claim clerk, claim percenter and waybill correction clerk. During period 1918-1936 he worked in the freight offices of the Illinois Cen-

possess sufficient fitness and ability, there was no violation of the Agreement. The positions involved have been clearly shown to require substantial training and experience of a technical character, and at the time of the claimant's applications his training and experience, in their bearing upon the duties of the positions, were so limited as to afford ample support for, and in the opinion of the Board fully to justify, the judgment of the carrier that the claimant did not possess sufficient fitness and ability for the positions. In these circumstances there was no violation of the Agreement, and no obligation thereafter rested upon the carrier to provide qualifying tests for the claimant. The proposals and counter-proposals for such qualifying tests disclosed of record never matured into agreement of the parties, and hence this aspect of the proceeding provides no ground for altering the conclusion reached on the basis of the rules of the Agreement."

The Carrier maintains it has shown by conclusive evidence and discussion that it has adhered strictly to the provisions of the promotion rule. Rule 6, by promoting the senior applicant possessing sufficient fitness and ability for the disputed position and maintains, further, that the claim should be denied for the following reasons:

1. The claimant was given full and unprejudiced consideration for the disputed position.
2. The claimant was not fit, as required by Rule 6, to fulfill the functions of the disputed position by reason of his deafness.
3. The claimant was not able, as required by Rule 6, to fulfill the functions of the disputed position by reason of his admitted lack of knowledge of even the basic elements thereof.
4. The Carrier exercised its discretion, according to principles projected by this Board, in declining to award the position to the claimant after a comprehensive consideration of his fitness and ability.
5. There is now no reason to set aside or reverse the decision made by the Carrier in good faith on the basis of the service record of the claimant and the established fact the several months training is required for an employe to qualify on the clerical positions under the group head.

OPINION OF BOARD: T. J. O'Connor, with seniority date of March 18, 1918, made application for the bulletined position, February 12, 1945 Group Head, Private Car Line Mileage Group, Car Accountant's Office, 63rd Street, Chicago, Illinois. The position required familiarity with mileage tariffs, figuring of mileage, to check and allot the work of the Bureau, to direct all functions thereof, prepare detailed drafts of reports, set up summaries, and prepare abstracts of the summaries by various mileage routes for payments to car owners. Mary Murphy, with seniority date of September 29, 1919, also made application for the position and was accepted. Mr. O'Connor has worked on various positions in the Clerical Department of the Carrier which are detailed in the Employees' submission, and which we deem unnecessary to repeat here. Consideration has been given to this evidence. For the past few years his work has been a compilation of trackage statements. He handled the Chicago Terminal trackage work. The Carrier asserts it gave adequate consideration to O'Connor's application; that his hearing was very defective and would constitute a great handicap on the position he sought, since it entails oral intercourse not of a routine nature and where new problems were constantly being discussed; that the former positions held by O'Connor were subordinate, and he would not be qualified to handle this position, due also to the fact that he would have to supervise and train employes, and the position is not of a routine nature while the

work that he previously performed was not complicated. This position also deals with large sums of money for mileage to large numbers of private car owners.

The rules of the applicable Agreement are:

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."

The Petitioner's contention is that the Carrier by its conduct in this case violated Rule 6 and Rule 9 of the Agreement. It is the function of management to select competent employees. Except when it has limited itself by contract, the right of selection is wholly within the discretion of management. Award 3151.

Under the cited rule, (Rule 6 in the instant case) the Carrier has the right to determine, in the first instance, the fitness and ability of applicants for the position. Award 2427. Fitness and ability for promotion to a position of greater responsibility must be commensurate with the requirements of the position to be filled. Award 2990. Fitness and ability does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance Award 2427. Award 3139, cited by the Petitioner, involving the Carrier and the Organization as in the instant case, this Board said 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. We are in accord with the language used in Award 3139. However, it is the duty of carrier as heretofore pointed out, in the first instance to determine the fitness and ability of the applicant.

After the carrier has determined that a senior applicant lacks sufficient fitness, the burden is upon such applicant to establish that he possesses sufficient fitness and ability to occupy the position. Award 1147.

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.

In the record before us, analyzed with the rules involved in mind and the awards heretofore set out, we conclude the claim should be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.