

Award No. 3537

Docket No. CL-3493

**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**

**DULUTH, MISSABE AND IRON RANGE RAILWAY  
COMPANY**

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

(a) The Carrier violated the Clerks' Agreement, when on September 15, 1945, it assigned employee Mary Talerico to vacancy of General Clerk in the office of the Comptroller, occasioned by the six months leave of absence granted the regular assignee thereof, covered by Bulletin dated August 24, 1945, and failed and refused to assign Mildred Rapp, an employ Senior to employee Talerico to the position, and

(b) That employee Mildred Rapp be compensated the difference between \$193.76 per month (the rate of the position she was then assigned) and \$208.76 per month (the rate of the General Clerks position) from September 15, 1945 to January 15, 1945, inclusive.

**EMPLOYEES' STATEMENT OF FACTS:** On August 24, 1945, the carrier issued bulletin, advertising for bids a vacant position, in Seniority District No. 1, of General Clerk in the Office of the Comptroller, rate \$208.76 per month. The duties of the position as shown on the bulletin were:

"Assisting Voucher Clerk. Must have thorough knowledge of I. C. C. Accounting Classifications."

Employee Mildred Rapp, seniority date in District No. 1 of June 20, 1927, filed a bid for the position within the time limit for receiving bids. On September 14, 1945, Mr. D. M. Stalker, Comptroller, called Miss Rapp to his office advising her that while she was the senior applicant for the position she could not be assigned because she had had no experience on that particular work and he did not have time to teach her the work.

On September 15, 1945, employee Mary Talerico, Seniority date in District No. 1 of November 11, 1942, was assigned the position. The application of employee Mildred Rapp being ignored and her rights to the position denied. On January 16, 1946, the regular assignee of the position, who was on a leave of absence, returned to the position and displaced employee Talerico.

**POSITION OF EMPLOYES:** There is in evidence an Agreement between the parties bearing effective date of April 16, 1941, from which the following rules thereof read:

Miss Rapp had never worked in the Comptroller's Office. Practically her entire service has been as a clerk in the Payroll Accounting Department. Employees have claimed she had a knowledge of I. C. C. classification and insofar as the distribution of certain labor items, the Carrier will agree, but it also asserts that Miss Rapp had no knowledge whatsoever of materials used by the Carrier or the proper distribution of same from an I. C. C. classification standpoint. Furthermore, she had no knowledge by which she could determine the difference between various operating charges and investment and maintenance accounts.

The Voucher Department of the Carrier is not extensive. It consists of Chief Voucher Clerk and three Assistants. One Assistant, or in other words, the position of the employee who was given a leave of absence, must work largely on his own initiative and on his own knowledge of the work required. It was a knowledge of this work which Miss Talarico had acquired by approximately three years of work in the Department which particularly qualified her to assume temporarily the position of the employee on leave.

The attention of the Board is called to the fact that this position was to be filled for only six months at the most. As a matter of fact the employee on leave returned in four and one-half months. The Carrier considers the strict application of seniority rules as inconsistent in a case of this kind, unless of course, it is privileged to select employees based on adequate fitness and ability.

In briefly summing up its position, the Carrier respectfully requests your Board to deny this claim for the following reasons:

- (1) Miss Rapp did not have adequate fitness and ability for the work on which she placed a bid.
- (2) Miss Talarico did have sufficient fitness and ability.
- (3) The Carrier violated no Agreement rule in eliminating Miss Rapp due to her lack of adequate fitness.
- (4) Rule 10 providing for assistance and proper trial applies only after employees are properly assigned.

**OPINION OF BOARD:** In August, 1945, the General Clerk in the Office of the Comptroller secured a six-months leave of absence. The position was bulletined and Claimant, with a seniority date of June 20, 1927, was the only bidder. The position was denied to Claimant and assigned, on September 15, 1945, to Mary Talarico, a junior employee with seniority date of November 11, 1942. Claimant contends that she should have been assigned to the position and claims the difference in rate of her regular position and the position of General Clerk from September 15, 1945 to January 15, 1946. The Carrier contends that Claimant did not have fitness and ability to perform work as required by Rule 8 of the current Agreement, which provides:

"Employees covered by these rules may use their seniority as provided in any rule in this Agreement subject to their fitness and ability to perform the work; fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to the excepted positions."

Claimant was entitled to the position if she had sufficient fitness and ability to perform the work of the position. The discussion will be limited to the question of Claimant's fitness and ability.

The record shows that Claimant transferred from the Safety and Welfare Department to the Payroll Department in 1932, starting as a stenographer. In 1940 she was assigned to the position of Maintenance of Way Timekeeper, the duties of which consisted of keeping all labor distributions and records for the Bridge and Building Department and Electrical Depart-

ment of the Misabe Division. In 1942 she was assigned to the position of Shop, Roundhouse and Store Department Timekeeper, the duties of which consisted of keeping all labor distributions and records for the Shop, Roundhouse and Store Department of the Iron Range Division.

The duties of the position sought required a knowledge of operating and investment accounts and a knowledge of Interstate Commerce Commission classifications in order to make a proper distribution of charges as between various operating and investment accounts. It is argued by the Carrier that Claimant had never worked in the Comptroller's Office and while she had a working knowledge of Interstate Commerce Commission classifications in so far as they relate to the distribution of labor items, she lacked knowledge of the difference between various operating charges and investment and maintenance accounts. For the purpose of this opinion, it will be conceded that the employee assigned was better qualified to step into the position and immediately perform the duties of the position because of her previous employment in the office where the position was located. But this is not a controlling feature.

It must be borne in mind that the responsibility for the safe and efficient operation of a railroad rests with management. The selection of capable employees is the prerogative of management and this responsibility rests with management completely except as it has been voluntarily limited by agreement with the Organization. The general purpose of Rule 8, and similar rules on other carriers, is to eliminate favoritism and prejudice in assigning positions within the scope of the Agreement. This is accomplished by requiring the senior applicant in point of service to be assigned if he has sufficient fit-

ness and ability to do the work. This does not mean that the employee has to be immediately fitted for the job. It means that he has such intelligence, training and experience that it could be reasonably assumed that he could do the work in a satisfactory manner after a brief apprenticeship, usually a qualifying time fixed by the rule itself. Naturally this requires the exercise of judgment, a function of management. Whether management has exercised an honest judgment requires an investigation of an intangible thing difficult of ascertainment. We cannot properly substitute our judgment for that of management because the official charged with the responsibility is usually familiar with the record of the employee, his habits, personality and character, and many other items bearing upon his fitness and ability which cannot be reflected in the record presented before this Board. We are limited, therefore, to a close scrutiny of the record to determine whether there is evidence of favoritism or prejudice, and if there is sufficient evidence to support the determination made by the Carrier.

We find no evidence in this case that Carrier's officials were prejudiced against this claimant or that they unduly favored the employee assigned. We think also there was evidence in the record requiring the exercise of judgment which is sufficient to sustain the conclusion reached by the Carrier that Claimant did not have sufficient fitness and ability for the position sought. We agree with the Organization that Rule 8 ought not to be used as an excuse for the exercise of arbitrary action. But, in the absence of a showing of undue favoritism towards the one assigned or prejudice against the employee rejected, or a showing that the evidence was not sufficient to sustain the exercise of managerial judgment, this Board cannot interfere. Awards 3151 and 3273.

**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 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 2nd day of May, 1947.