Award No. 3980
Docket No. CL-4019

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

PACIFIC FRUIT EXPRESS COMPANY

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

(a) The Company violated Rule 10 of our current Agreement and Memorandum of Agreement dated October 23, 1939, when it refused and continues to refuse to place Mr. G. L. Miller on position of Assistant Lumber Agent-Inspector, at Portland, Oregon.

(b) Company be now required to place Mr. G. L. Miller on the position and compensate him for any wage loss suffered due to difference in rate of pay between position or positions occupied by him and the rate of Lumber Agent-Inspector, retroactive to May 1, 1946, the date position assigned to an employe other than Mr. Miller.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing date of September 15, 1939, as to rules and working conditions, is in effect between the parties to this dispute.

Position of Assistant Lumber Agent-Inspector is located at Portland, Oregon, in territory designated in Rule 4 of our Agreement with the Company as Seniority District No. 9.

On or about December 31, 1946, the incumbent of the position, a Mr. Leonard Fahlstrom, resigned from service of the Pacific Fruit Express Company.

The position was allowed to remain unfilled until May 1, 1946, when it was assigned to Mr. George J. Krebser, an employe from Tucson, Arizona, located in Seniority District No. 4, who was placed on the position.

Under date of January 25, 1946, Mr. George L. Miller, an employe holding seniority in District No. 9, the district on which the vacancy occurred, wrote to Mr. A. J. Mello, as follows:

"Portland, Ore.,
January 25, 1946.

Mr. A. J. Mello,
Purchasing Agent,
Pacific Fruit Express Co.,
San Francisco, Calif.

Dear Sir:

I have recently returned from service and at the present time am employed as a General Clerk in the Office of Mr. Z. F. Moody, Superintendent, Northwestern District.

pany necessarily made its selection from outside of Seniority District No. 9, as indicated in item 4 of Statement of Facts.

It is the further position of the Company that the memorandum of agreement of October 23, 1939, mentioned in Petitioner's claim, and quoted in item 2 of Company's Statement of Facts, was in the first place made in connection with the original appointment on November 1, 1939, to the position of Assistant Lumber Agent-Inspector and, in the second place, did not modify Rule 10 (a) of current agreement as it made no reference to the latter, and in facts by its very terms was not mandatory, merely expressing a desire that the Management select an employe from the ranks in the Seniority District in which the position of Assistant Lumber Agent-Inspector was to be established.

In the Fall of 1939, when the position of Assistant Lumber Agent-Inspector was originally in contemplation, the Lumber Agent and his existing force, reporting direct to Purchasing Agent in San Francisco, were carried on payroll Audit No. 10 covering all employes in Seniority District No. 1 at San Francisco, while other employes in the Company's offices at Portland, but reporting to Superintendent in charge of Seniority District No. 9, were carried on payroll Audit No. 6 copering all of the employes in the Superintendent's office at Portland. This situation made it possible for employes in both Seniority Districts to aspire to the new position. The memorandum of agreement referred to was entered into to clear up this confusion and establish the promotional right of qualified employes in Seniority District No. 9 to the new position. There being a qualified employe in Seniority District No. 9, appointment was made November 1, 1939, as indicated in item 3 of Company's Statement of Facts.

Early in 1946 it became necessary again to fill the position of Assistant Lumber Agent-Inspector. Survey of employes in Seniority District No. 9, including Claimant G. L. Miller, developed there was no one qualified to fulfill the duties and responsibilities of the position. As pointed out in item 4 of Company's Statement of Facts, Claimant Miller was interviewed, but he was not selected because of his complete lack of qualifications. The Company, therefore, exercised its right under Rule 10 (a) to select an employe from the ranks who was qualified for the position in question.

It is, therefore, the position of the Company that in view of the facts of the case, Petitioner's claim should be denied.

OPINION OF BOARD: The Organization contends that Rule 10, current Agreement, and Memorandum Agreement of October 23, 1939, were violated when the Carrier failed to assign G. L. Miller to position of Assistant Lumber Agent-Inspector, at Portland, Oregon. The applicable portions of these two Agreements provide:

> "Positions, including excepted positions, will be filled by promotion of qualified employes from the ranks. In filling excepted positions, preference shall be given to employes in the seniority district in which the vacancy or new position occurs." Rule 10 (a), current Agreement.

> "Due to the nature of this work, and the necessity for this employe to travel, making inspections of lumber at the different mills in the territory from which lumber is purchased by the Pacific Fruit Express Company, it is desired that the management select an employe for this position who is an employe from the ranks in the seniority district in which the new position is established." Memorandum of Agreement of October 23, 1939.

It is quite evident that the latter agreement was made to avoid the effect of Rule 1 (f) 1, current Agreement, to the effect that employes assigned to road service where special training, experience and fitness are necessary, are excluded from the Agreement. The effect of the Memorandum Agreement is to bring the position of Assistant Lumber Agent-Inspector within the provisions of the Agreement, including Rule 10 (a). Consequently, if an employe

from the ranks is within the seniority district in which the position was established, is qualified, he is entitled to the position.

The record shows conclusively that Miller was not qualified for the position sought. He claims a willingness, however, to qualify himself by obtaining special training and experience. But Rule 10 (a) provides that qualified employes will be promoted, not one who is willing to qualify himself in the future. We are obliged to say that the record sustains the Carrier's finding that Miller was not qualified for the position and, consequently, he is in no position to complain of the assignment of an employe from another seniority district.

The argument advanced by the Organization that the position must be filled by an employe from the Portland seniority district is not sustained by the Agreements upon which it relies. If there is no qualified employe in the district the Carrier may assign one from another district. As Miller was not qualified for the position when it was filled, the Agreements were not violated to his injury.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

That the carrier and employes involved in this dispute are respectively carrier and employes 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 no violation of the applicable Agreements has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.