

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

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

1. The Carrier violated the Clerks' Agreement when on June 16, 1947, it assigned Miss Wanda Potts to vacancy covered by Bulletin No. 291 dated June 9, 1947, in the Accounting Department at Erwin, Tennessee, and declined and refused to consider application of Miss Lola White the senior employe, and

2. Miss Lola White be assigned to the position described in Bulletin No. 291 and be compensated for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: The following position was bulletined June 9, 1947:

"Office of the General Auditor

The following is hereby advertised for a period of six days: Erwin, Tenn.—Clerk—8 A. M. to 12 noon; 1 P. M. to 5 P. M.; except Sundays.

Requirements: Sorting, filing and binding records; comparing abstracts and related records; operation of key-punch and other office mechanical equipment and devices and other duties that may be assigned. \$189.70 per month. This bulletin expires 5 P. M. June 14, 1947.

Chas. Hewett, Gen. Aud."

The position was assigned to Miss Wanda Potts a new employe in preference to Miss Lola White an employe fully covered by the Agreement rules, with seniority dating from Oct. 1, 1945. Miss White filed formal protest June 17, 1947, requesting that she be assigned to the position, and made claim for all wage loss sustained. Mr. Hewett declined the claim, June 26, 1947, in letter addressed to the General Chairman reading as follows:

as the operator of the tabulator has been on that position for approximately ten years, and the operator of the sorter has had three years' experience, it is obvious that the key punch operators have not been proficient.

The weekly report of June 16, 1945, shows certain reports to the Interstate Commerce Commission as past due, figures for Form SCS for February, March and April being delayed and certain information for two states being out of balance, and the reason given as "volume of work per employee."

The weekly report of September 27, 1946, shows the work in the Tabulating Room in arrears and the reason given is "inexperienced clerk, work in arrears for prior months."

The weekly report of March 8, 1947, shows the work in arrears, and the reason given as "illness and inexperienced key punch operator."

The weekly report of November 1, 1947, shows the work in the Tabulating Room is in the best shape it has been for some months and, notwithstanding the fact that some overtime has been worked, it seems safe to infer that the present condition is the result of an experienced key punch operator.

Miss Potts, who was assigned June 16, 1947, punched 1,094 cards from Form A. D. 138 of June 20, 1947, with one error, and punched 2,545 cards from Form A. D. 138 of August 20, 1947, with seven errors. Her predecessor, who has filled the position of key punch operator since February 13, 1947, punched 920 cards from Form A. D. 138 of May 27, 1947, with seven errors, and the sorter operator, who also does some key punching and has filled a position in the Tabulating Room since August 14, 1944, punched 1,190 cards from Form A. D. 138 of September 6, 1947, with ten errors.

For all of the reasons herein set out, the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented by this claim is whether Carrier violated the Agreement when it failed to promote Lola White, the claimant, to a position for which she bid but which was assigned to another who held no seniority at the time.

Claimant was first employed in 1945 and holds seniority from October 1, 1945. She worked as a messenger until she was displaced by a senior employe on October 29, 1945. She was recalled to service on January 27, 1947 "in anticipation of certain vacancies," and again worked as a messenger to fill a vacancy caused by promotion. Before coming to the railroad she had completed high school where she studied typewriting and stenography, and had worked as a file clerk with the FBI in Washington.

She submitted her bid for the position advertised on June 9, 1947 under the following bulletin:

"The following is hereby advertised for a period of six days: Erwin, Tenn.—Clerk—8 A.M. to 12 Noon; 1 P.M. to 5 P.M., except Sundays. Requirement: Sorting, filing and binding records; comparing abstracts and related records; operation of key-punch and other office mechanical equipment and devices and other duties that may be assigned.

With two years' experience	\$189.70 per month
Less than two years' and more than eighteen months' experience	per month
Less than eighteen months' and more than twelve months' experience	per month
Less than twelve months' and more than six months' experience	per month
Less than six months' experience	per month

"Applicants will file application with the officer issuing this notice, within the specified time, and will show on application their location and qualifications for filling position.

The senior qualified employe making application will be duly assigned."

Her bid was refused, and the position was assigned to Wanda Potts on June 16, 1947. Miss Potts had worked for Carrier for only 22 days preceding her assignment but had no seniority whatever, having been in an excepted position. She had previously worked in a Naval Supplies office for 2½ years where she had some experience in key punching and tabulating work.

Claimant immediately protested. From the correspondence in the record we find the General Auditor explaining that Miss Potts got the position because she was an experienced key punch operator, and Claimant had had no such experience. The General Manager then wrote that Carrier was justified in assigning the younger (in service) but experienced clerk to the position. Again the General Manager wrote that assigning the experienced clerk instead of the inexperienced clerk was in line with the Agreement.

Claimant relies on the following rules:

"Art. 3 (g) Employes 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. The head of the department shall be the judge, subject to appeal.

Art. 3 (l) An employe bidding in a position will be allowed sixty days in which to qualify. Failing to qualify he will drop back to the position from which he came. Failing to qualify on the second position bid in he will drop back to the position from which he was promoted, but may not bid on any bulletined position for a period of one year.

In such cases, all employes drop back to the positions previously held and the position vacated through failure to qualify will be re-advertised.

Art. 3. (m) Employes will be given full cooperation of department heads and others in their efforts to qualify."

Under the above rules experience in the type of work of a position bid for is clearly not a prerequisite for promotion. Carrier recognizes this because the bulletin advertising the position refers to "less than six months' experience" which includes a status of no experience whatever. Experience becomes a factor only in determining the rate of pay under the step rate provision based on length of experience. Section (l) allows sixty days to qualify, or to gain the necessary experience required for the position. Section (m) assures the full cooperation of the department heads in an employe's efforts to qualify.

Therefore, experience cannot be a consideration in determining the sufficiency of the initial fitness and ability for promotion. Since lack of experience appears to be the only reason Claimant was not assigned the position, Carrier violated the Agreement since Claimant should have prevailed because of her seniority.

This Division in a great number of awards has announced a fixed rule that we may not substitute our judgment for that of the Carrier in determining fitness and ability. Carrier alone is authorized to determine that question by its own judgment, freely exercised.

But under the facts in this record, and the rules of the Agreement it is clear that Carrier erred in its judgment under the plain meaning of the

rules by basing its decision on experience alone. Compare Awards 2427, 2534 and 3139.

Accordingly, the claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claims (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 30th day of July, 1948.