

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, 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 that:

(1) The Carrier violated the Agreement when it assigned A. C. Meakins to position of Infreight Teller at Freight Office South Water Street, Chicago, on position advertised on vacancy bulletin No. 2899 dated April 27, 1946, and declined to consider the application of D. J. O'Leary, the senior employee bidding on this vacancy.

(2) That D. J. O'Leary be assigned to position of Infreight Teller covered by Bulletin No. 2899 and compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: On April 27, 1946, position of Infreight Teller, rate \$8.92 per day was advertised on vacancy bulletin No. 2899 to employees in freight office at South Water Street, Chicago, Illinois.

The position was awarded to A. C. Meakins with seniority date of Feb. 16, 1945. The application of D. J. O'Leary with seniority date of June 20, 1944 was not given proper consideration.

This position of Infreight Teller works in the Inbound Freight House in a space next to the Asst. General Foreman's Office. There are two infreight tellers working at this location. Eighty-five percent of their work is stamping bills for the Cartage Companies and for the draymen who come to their respective windows to pick up city freight. The balance of the work, or about fifteen percent, pertains to receiving money at windows, issuing storage bills and picking up "shippers order notify" bills of lading.

A small amount of cash ranging from \$20.00 to \$40.00 per day is collected by these infreight tellers on miscellaneous freight from certain draymen. This is turned over to Cashier's Office in the main freight office building located across the street.

POSITION OF EMPLOYEES: There is in evidence between the parties an agreement bearing effective date of June 23, 1922 and revised September 1, 1927, which contains the following rules:

RULE 3—Seniority of new employees will begin at time employees' pay starts. Employees covered by this schedule when re-employed lose their former rank and enter the service as new men.

not disclose any abuse of discretion on the part of the carrier in concluding that the claimant did not 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 position. 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 proceedings 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 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.

The claim should be denied for the following reasons:

1. The claimant was given full and unprejudiced consideration for the disputed position.
2. 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.
3. There is 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant bid on position of Infreight Teller at Freight Office, South Water Street, Chicago, and was rejected on the ground that fitness and ability was insufficient. The position was awarded to a junior employee. Employees file claim as indicated.

There is no doubt of the qualifications of the junior employee who was finally awarded the position and there is no doubt but that the qualifications of said junior employee was superior to that of the Claimant. That, however, is not the test and hence is immaterial in a consideration of this claim.

This Board has frequently had occasion to consider the question of selection of employees for promotion on the basis of promotion rules similar to that found in the instant Agreement and such Awards as have been issued in connection therewith are fairly uniform in holding that the determination of fitness and ability in the first instance is a matter for the Carrier's discretion and when fitness and ability of an employee is found wanting, the employee has the burden of overcoming the Carrier's decision by proof.

Here we cannot say that such proof has been supplied nor can we say that there was not reasonable ground for Carrier's decision in the matter. The record reveals that the performance of the duties of the position of Infreight Teller requires skill in clerical work and considerable attention to varying details. Claimant at the time of the bulletining of the position had about twenty-two months of service with the Carrier, about nine of which were as a messenger and the remainder in minor clerical work, mostly filing. True, he filled in for some twenty-three days at different times on higher-rated position when regular incumbents were off because of sickness, however,

it is reasonable to conclude that Carrier's statement that he did not fully perform all of the work of such positions is true. As a matter of fact, that is not denied by the Employees. Claimant's application for employment reveals no clerical experience in outside employment so that the only experience record which he had in clerical work was that above indicated. Now, experience alone is not the only basis upon which an employee's right to advancement should be determined, but it does afford some means of forecasting ability to perform higher-rated work, and here there is nothing further in the record of the Claimant which the Carrier could have taken into account in judging the sufficiency of Claimant's fitness and ability to fill the position. Accordingly, we believe that there was a reasonable basis for Carrier's decision and hence we do not feel justified in interfering with its judgment in the matter.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of July, 1949.