

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

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

1—That the Carrier violated the rules of the Clerical Agreement when, on June 7th, 1948, Joseph W. Schneider was removed from position of Chief Clerk, a Negotiated List No. 1 position, at Broad and Callowhill Streets Freight Station.

2—That the Carrier be required to restore Joseph W. Schneider to position of Chief Clerk at Broad and Callowhill Streets Freight Station, and compensate him for all monetary wage loss by reason of such violation and the action taken by the Carrier.

EMPLOYES' STATEMENT OF FACTS: On April 1, 1948, position of Chief Clerk, a Negotiated List No. 1 position, rate Three hundred twenty-five dollars and three cents (\$325.03) per month, Broad and Callowhill Streets Freight Station, became vacant, due to the promotion of the former incumbent of the position. On April 5, 1948, the Division Chairman of the Brotherhood Clerks' Committee called attention to the Acting Superintendent of the Philadelphia Division that position of Chief Clerk, Broad and Callowhill Streets, remained vacant and that Mr. Joseph W. Schneider had been sent to the Company's physician for examination for promotion to this assignment, but the vacancy had not been filled. The Acting Superintendent filled the vacancy of Chief Clerk by assigning Joseph W. Schneider to the position.

Mr. Joseph W. Schneider had previously been the incumbent of position of Assistant Supervisor, Central Billing Bureau, which is located in the Broad and Callowhill Streets Freight Station. Upon the assignment of Mr. Joseph W. Schneider to the position of Chief Clerk, John V. McGaughey was promoted to the position of Assistant Supervisor, Central Billing Bureau.

On June 7, 1948, after having filled the position of Chief Clerk for a period of two months, Mr. Schneider was informed that the Management had failed to approve his appointment due to his age, and that he would be displaced on June 7, 1948 by John V. McGaughey. Mr. Joseph W. Schneider has seniority rating of No. 64 and a date of September 8, 1912 on the Philadelphia Division Seniority Roster. Mr. John V. McGaughey has seniority dating of November 24, 1941 and rating of No. 475 on the Philadelphia Division Seniority Roster.

Under the facts and circumstances set forth in the foregoing, the Carrier holds that John V. McGaughey, who was appointed to fill the vacancy on Chief Clerk's position at Broad and Callowhill Streets Freight Station, was best qualified in the judgment of the Management to fill the position and submits that this holding is supported by the evidence and was not the result of capricious or arbitrary action. Further, when making the appointment Rule 2 (a) was fully complied with and not violated, and to sustain this claim would result in an unwarranted encroachment of the right and prerogative of the Carrier accorded under the rules to select employees who possess the necessary fitness, ability and qualifications to fill such position. The Carrier, therefore, requests that the claim be denied in its entirety.

(Exhibit not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends that Carrier violated the Rules of the Clerks' Agreement when, on June 7, 1948, it removed Claimant, Joseph W. Schneider, from the position of Chief Clerk at Broad and Callowhill Streets Freight Station. It asks that he be restored to that position and compensated for any monetary loss suffered by reason thereof.

The record discloses that on April 1, 1948, a vacancy occurred in the position of Chief Clerk of the Carrier at its Broad and Callowhill Streets Freight Station in Philadelphia, Pa. On April 5, 1948, Claimant, Joseph W. Schneider, was appointed by the Acting Superintendent to temporarily fill the position. This temporary appointment was made on condition that it required the Management's approval before becoming permanent. At the time Claimant held the position of Assistant Supervisor in the Central Billing Bureau, which is located in this station, with a seniority rating of 64th on the Philadelphia Division Seniority Roster dating from September 8, 1912.

On June 5, 1948, Claimant was notified that on June 7, 1948, he would be replaced on the position of Chief Clerk, to which he had been temporarily appointed, by John V. McGaughey whom the Carrier had permanently appointed to occupy that position. McGaughey had a seniority rating of 475th on the Philadelphia Division Seniority Roster dating from December 24, 1942.

Claimant thereupon requested a hearing in accordance with the provisions of Rule 43 of the effective Agreement. This hearing was granted and subsequently held on June 25, 1948. The hearing developed that Claimant had satisfactorily filled the position during the time he had occupied it.

Admittedly the position of Chief Clerk at Broad and Callowhill Streets Freight Station is a Negotiated List No. 1 position under paragraph (a) of Rule 2 of the Clerks' Agreement and therefore subject to the following paragraph thereof:

"When vacancy occurs on any such position the Management, by appointment, shall fill the vacancy with the person who in **its judgment, is best qualified** to fill the position. In so doing full consideration will be given the seniority standing of available employees on the division or in the department where the vacancy occurs." (Emphasis ours)

Under this rule Carrier, in filling a position by appointment to which it is applicable, is required to consider the qualifications of all employees on the Division or in the Department where the vacancy occurs, who are available to fill the position, and in so doing to give full consideration to their seniority standing. However, this rule does not make seniority a conclusive factor in controlling the Carrier's decision in making the appointment but leaves it free to select one therefrom who, "in its judgment, is best qualified to fill the position." This does not leave the Carrier free

to defeat the seniority of an available employe by action that can be said to have been arbitrarily taken or capriciously made but does leave it free to exercise its judgment as to the qualifications of all available employes, provided such judgment is reasonably made.

The position of Chief Clerk is executive in character. It involves not only performing the routine duties of the office itself, which duties the record shows the Claimant is fully capable of performing, but also the supervision of employes and personally dealing with patrons of the Carrier. It is self-evident, from the nature of the position, that to be properly qualified therefor involves more than just the ability to perform the routine duties of the office. Carrier says, in determining who, of those available, was "best qualified", it took into consideration their educational background and preparation, personality, appearance, age, initiative and executive ability. Just what qualifications are necessary to fill this position, or the extent to which either Claimant or McGaughey possessed them, is difficult to decide but that decision rested with the Carrier and, in making it, we cannot, from the record before us, say it acted arbitrarily or that it was capriciously made.

We find that Carrier, in deciding who, of those available, was "best qualified" to fill the position of Chief Clerk, acted reasonably and within its authority under the rule herein quoted.

FINDING: 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 Employe involved in this dispute are respectively Carrier and Employe 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 has not violated 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 12th day of August, 1949.