

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad:

1. That the Carrier erroneously assigned a junior applicant to the position of assistant wire chief in "SO" Relay Office, Terre Haute, Ind., on Bulletin No. 31 of October 14, 1946; and
2. That the senior applicant shall be awarded the position and all employes affected shall be placed on their proper position and allowed any expenses incurred as a result of this error:

EMPLOYES' STATEMENT OF FACT: On October 14, 1946, the Assistant Train Master and Division Operator issued Advertisement Bulletin No. 31, addressed to Operators and Levermen, St. Louis Division, reading as follows:

"Applications for the following permanent position will be accepted by the undersigned until 9:00 A.M. Oct. 21, 1946:

Position	— Asst. Wire Chief.
Location	— "SO" Relay Office, Terre Haute, Ind.
Tour of Duty	— Sunday — 7 A.M. to 3 P.M.
	Monday — 7 A.M. to 3 P.M.
	Tuesday — 3 P.M. to 11 P.M.
	Wednesday — 11 P.M. to 7 A.M.
	Thursday — 11 P.M. to 7 A.M.
	Friday — 11 P.M. to 7 A.M.
	Saturday — Relief Day

Rate of Pay — \$1.23 per hour.

Acknowledge receipt."

On October 21, 1946, the Asst. Train Master-Division Operator issued "Notice of Award" to the effect that the position advertised in Bulletin No. 31, dated October 14, 1946, was awarded to Barbara A. Cazoo.

In addition to the bid received from Barbara Cazee, bids were also received from Helen Endress and Marguerete Cook. The seniority rank of the three named employes is as follows:

Name	Seniority Date	Rank on Roster
Helen Endress	10-23-1942	71
Marguerete Cook	7-3-1943	74
Barbara Cazee	7-2-1945	85

CONCLUSION

The Carrier has shown that the position of Assistant Wire Chief, "SO" Relay Office, Terre Haute, Indiana, was awarded to the senior qualified employe making application therefor, in accordance with the provisions of the applicable Agreement.

It is, therefore, respectfully submitted that the claim is without foundation in the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 14, 1946 Carrier bulletined position of Assistant Wire Chief, "SO" Relay Office, Terre Haute, Indiana, and on October 21st gave notice that the position had been awarded to Barbara Caze. Both Helen Endress and Marguerite Cook, who were senior applicants, filed protests and received reply that "consideration was given to the applicant best qualified for the position." The Committee asks that the senior applicant be awarded the position, and compensated.

The contract requires, in common phrase, that "ability and fitness being sufficient, seniority will govern." This Division has uniformly held that determination as to ability and fitness is exclusively a managerial function and will be sustained unless it appears that the decision of the Carrier was capricious or arbitrary; that the burden is on Claimant to establish that such was the case, and that if the decision of the Carrier is supported by substantial evidence it will not be disturbed.

The Committee first complains that the Bulletin was not advertised for ten days as required by rule. But it does not now deny Carrier's explanation that the rule provides for reduction of time by agreement and that specific agreement therefor had been made.

It next points to Carrier's answer to Claimant's protest of the appointment wherein it is said that "In awarding the position * * * consideration was given to the applicant best qualified for the position." That is not the proper basis of selection and if decision rested on that statement alone the appointment could not stand. But Carrier further says, not in contradiction of that statement but in addition to it, that the two senior applicants did not possess the ability and fitness requisite for the position in that they could not transmit or receive messages by telegraph, while the appointee did possess that ability. Carrier is not limited to its stated reason if the evidence discloses adequate ground for its decision.

In support of its contention that the Carrier's selection was capricious and arbitrary, the Committee contends: (1) that the bulletin of the position did not state any requirement of ability to transmit or receive messages by telegraph; (2) that in fact the Morse telegraph was used in the office "only to a very small extent"; (3) that Miss Endress had on many occasions relieved all positions in the office; (4) that within three months thereafter the senior applicants applied for and were awarded positions posted as requiring ability to transmit and receive messages by telegraph; (5) and, finally, that even if not sufficiently proficient, the senior applicant should have been assigned and posted until sufficiently trained for the position.

Claimant's first ground of attack is admittedly insufficient. Since the only objections by the Carrier to the ability and fitness of the senior applicants was their lack of knowledge of Morse telegraphy, Claimant's other asserted grounds present to us four questions:

1. Was ability to receive and transmit messages by telegraph a necessary requirement for the position?
2. If so, did either senior applicant possess such ability?
3. If not, did the appointee possess such ability?
4. Should Carrier have assigned the senior applicant and posted her until she learned Morse Code?

In approaching these questions we have in mind that failure to protect seniority rights destroys the essential security of service and, as well, that forcing the appointment of employes to positions beyond their competence not only handicaps the industry but endangers the safety both of passengers and employes. The task of proper protection of these opposing rights is made difficult by the fact that there are seldom absolutes either in the necessary requirements for positions or in the ability to perform them. When substitute but less efficient methods of performance exist, it is often difficult to determine what requirements are essential rather than merely important. Similarly, where among applicants there is none with perfect ability and fitness and none with complete absence of both, but the comparative abilities of the applicants are not too greatly different, it becomes a close question whether one is fit, and the other unfit, or whether one is simply more fit than the other. In such situations reasonable latitude must be given to the discretion of the management, and any firm conclusion thereon by this Board is particularly difficult when, as here, it must depend largely on indefinite and general statements of opinion by persons who are not disinterested.

As to the first question, the Committee states only that all positions in the office involve the handling of messages by Morse telegraph "to a very small extent" and "that the Pennsylvania Railroad has eliminated Morse telegraphy as a requirement when hiring employes for service under the Telegraphers' Agreement." The former statement is virtually an admission and the latter is without support of concrete statement. On the contrary, Carrier asserts that Morse Code is the only means of communication with certain points, including Peoria, Illinois, and that knowledge of it is a necessary prerequisite of the office. Also, that in 1939, at the request of the employes for reclassification, it was jointly agreed that use of Morse Code was part of the work at this office and that the positions there were reclassified as Wire Chief and Assistant Wire Chiefs for that reason. Accordingly, we must conclude that the Committee has failed to establish that knowledge of Morse Code was not a necessary requirement for the position.

As to the second question, the Committee relies solely upon the facts that the senior applicants had "on numerous occasions" relieved all positions in the office, and that some three months later both were assigned to positions bulletined as requiring knowledge of Morse Code. Nowhere in the processing of the claim do we find any specific assertion that the senior claimants could handle Morse Code, and nowhere is there a direct statement as to such ability by them or by anyone in position to know. As against this is the positive statement of Carrier that they "were not qualified Morse Code operators" at the time the position was bulletined. As noted in Award 4358, qualifications to work a position as an extra do not establish qualifications to permanent appointment, and the fact that three months later the senior employes were appointed to positions advertised as requiring such skill may mean either that the skill was subsequently acquired or that these were the only applicants available and the positions had to be filled, as stated by Carrier and not denied. Claimants have failed to show that they had knowledge of Morse Code.

As to the third question, the Committee relies on the asserted fact that after Miss Cazee's appointment the record shows no Morse Code messages bearing her signature. Such negative evidence is not of great weight and cannot prevail over Carrier's submitted record of messages by her and its showing she had taken instruction in Morse telegraphy prior to entering its service and had attended classes of instruction thereafter, which were open to claimants but not availed of by them.

As to the last question, we cannot interpret the contract provision that "an extra who accepts an advertised position * * * shall be paid for learning such position" to mean that a position must be awarded to the senior applicant even though without any of the training and skill required, and that such appointee be paid while pursuing a course of instruction in the skills required. Such interpretation would entirely destroy the "ability and fitness" rule, and the Committee does not, in fact, contend that such is a proper interpretation. Interpretation must be consistent both with that rule and with Article V, Section 16 (a) of the rules. So construed, we think "learning the position"

means the learning, by one generally qualified in the required skills, of the special requirements peculiar to the position involved. Here there is no showing requisite for the application of that rule.

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 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

We find that the Carrier did not erroneously assign the position.

AWARD

Claims (1) and (2) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 19th day of January, 1950.