

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that:

(a) the Carrier violated the provisions of the rules of the Telegraphers' Agreement when and because it refused to place G. W. Earl who was the senior applicant for the vacancy as Agent-telegrapher at Palmyra, New York, on October 18, 1948.

(b) in consequence of this violation, G. W. Earl shall now be placed on the position of Agent-telegrapher at Palmyra, and

(c) paid for posting and qualifying time on October 18, 19, 20, 21, 25, 26, 27, 28 and 29, 1948.

(d) receive the higher rate of pay as between any position he may have worked and the rate of pay at Palmyra, from October 30, 1948, the date he became qualified to work as agent-telegrapher at Palmyra, until placed on this position, plus travel and waiting time as well as any other expenses incurred, and

(e) that G. J. Allen and all other employees adversely affected shall revert to their former positions and paid for all wages lost, as well as travel and waiting time and any other expenses incurred as a result of this improper act.

EMPLOYEES' STATEMENT OF FACTS: An agreement effective July 1, 1948, is in effect between the parties, copies are on file with the National Railroad Adjustment Board.

On October 8, 1948, Bid Sheet No. 7 was issued by the Carrier asking for applications for the vacancy of Agent-telegrapher at Palmyra, New York, among other positions; the hours of this position were 8:00 A.M. to 5:00 P.M. with one hour out for lunch, daily except Sunday. Rate of pay \$1.25 per hour.

On October 18, 1948, the Carrier issued a bulletin notice to all concerned advising, among other things, that the position of Agent-telegrapher at Palmyra, New York, was assigned to G. J. Allen. In addition to being a junior applicant for the position, Allen had not complied with the requirements under the rules that each employee must file copy of application with Local Chairman.

to be wanting, the burden of overcoming that decision by substantial and competent proof rests upon the employe (Awards 2031, 2491, 3273)."

CONCLUSION: The evidence herein presented conclusively shows that assignment to position of Agent-telegrapher at Palmyra, N. Y. on October 18, 1948 was made in accordance with applicable rules of the Telegraphers' Agreement with no capricious or arbitrary action on the part of the Carrier. The claim of the Employees is entirely devoid of merit and should be denied. (Exhibits not reproduced).

OPINION OF BOARD: On October 8, 1948, the Carrier bulletined the position of Agent-telegrapher at Palmyra, New York. On October 18, 1948, Carrier gave notice that the position was assigned to G. J. Allen. The senior applicant for the position was G. W. Earl, the Claimant in this dispute. He asserts that he was entitled to the position and that Carrier violated the Agreement when it denied it to him.

The rules particularly applicable to the situation before us are Articles 27 (b) and (e), current Agreement, which state:

"(b) Employees desiring advertised positions must file application with the office issuing the notice, copy to the local Chairman, by 12 o'clock noon on the tenth calendar day following the date of notice, provided that in the event the tenth calendar day is Sunday or a recognized holiday, the application must be on file by 12 o'clock noon of the following business day."

"(e) Assignments to positions will be based on qualifications and seniority; qualification being sufficient, seniority will govern. Employees declining to apply for advertised positions do not forfeit seniority."

The responsibility for the safe and efficient operation of a railroad rests with management. The selection of capable employees for the carrying out of this responsibility is an absolute prerogative of management except to the extent that it has been limited by agreement. The primary purpose of Rule 27 (e) is to eliminate favoritism and prejudice in the assignment of positions under the Agreement. The manner of the accomplishment of this purpose in the situation before us is by requiring the assignment of the senior applicant if he has sufficient qualifications for the position. Whether an applicant has sufficient qualifications involves a matter of judgment on the part of management and where management exercises its judgment upon adequate evidence upon which to base a finding and it does not appear that prejudice or favoritism was a motivating factor, this Board will not undertake to usurp the function of management by substituting its judgment for that of the Carrier.

In the present case, Claimant Earl was the senior applicant for the position of Agent-telegrapher at Palmyra. The question for determination is whether Earl has sufficient qualifications for the position applied for. If he had such qualifications, the position should have been assigned to him; if he did not, he has no basis for complaint.

In the present case, the Carrier contends that Acting Chief Signalman Sprague investigated the qualifications of the Claimant and found them insufficient. The investigation made by Sprague consisted of a telephone call to the Claimant and the discovery that he was not familiar with various phases of Agent's work. Whether such discoveries were material or inconsequential is not shown by the record. It does not appear that Sprague knew that Claimant had been posting and qualifying himself with experienced employes in similar positions. He made his decision on a very minimum of information concerning the qualifications of this Claimant.

Most of the evidence in the record was procured after the assignment had been made to the junior applicant. The Carrier procured letters from

the Agents with whom Claimant posted which tended to impeach their previous statements. The Acting Chief Signalman reprimanded these Agents for posting the Claimant without authority from superiors, thus imposing a form of coercion in obtaining the impeaching statements mentioned. The record clearly shows that the Carrier made only a perfunctory examination of Claimant's qualifications at the time it passed judgment. It now relies upon information to defeat the claim which was acquired long after the decision was made.

Ordinarily the burden of proof is upon the Organization to show that the senior applicant was qualified in order that his seniority would operate to entitle him to the position. The record shows that the junior applicant who was assigned the position was the nephew of the Carrier's Chief Signal Supervisor. This fact, coupled with the perfunctory manner of investigating the qualifications of Claimant, creates more than a mere suspicion as to the reason for the manner in which the applications and assignment were handled. We have said, and correctly we think, that where it is shown that a successful junior applicant is the son of an officer of the Carrier, a presumption of favoritism arises which has the effect of casting the burden upon the Carrier to overcome it with affirmative evidence showing that Claimant did not have sufficient qualifications to perform the work of the position. Award 3538. This, it has not done by a preponderance of the evidence. We conclude, therefore, that the Carrier failed to comply with Rule 27 (e) in assigning the junior applicant in this case to the position.

It is the function of management to determine the qualifications of employees for new positions. It is not the province of this Board to make such selections on evidence such as we have before us. We therefore remand this case for the further consideration of the parties on the property, with directions to the Carrier to examine into the qualifications of this Claimant within forty-five days and, if he be found to have sufficient qualifications for the position of Agent-telegrapher at Palmyra, New York, that an assignment be made in accordance with Rule 27 and an adjustment of wage losses, if any, be made in accordance with the rules of the current Agreement.

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

That both parties to this dispute waived oral hearing thereon;

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 the Agreement was violated as shown by the Opinion.

AWARD

Claim remanded for further proceedings in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.