

Award No. 5006

Docket No. CL-4997

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 8, 1949, it assigned Mr. B. H. Everett to vacancy covered by Bulletin No. 330 dated June 1, 1949, in the Accounting Department at Erwin, Tennessee, and declined and refused to consider applications of Mr. I. R. Elledge and Mr. L. G. Hendrix the senior applicants, and

2. The senior employe, Mr. L. G. Hendrix be assigned to the position described in Bulletin No. 330 and all employes be compensated for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: The following position was bulletined June 1, 1949.

Bulletin No.	330
Place	Erwin, Tennessee
Date	June 1, 1949
File	976

To Clerical Employees:

Following position is hereby advertised for bids: Applications on Standard form should be sent to the undersigned and will be received from (date) June 1, 1949 until 5:00 P.M. (date) June 6, 1949 both inclusive.—

Title of position—Interline Freight Clerk—Utility
Location—Erwin, Tenn., Accounting Department
Rate of Pay—\$287.60
Hours of assignment—8 A.M. to 12 noon—1 P.M. to 5 P.M.
No. Days position works—6
Days of assignment—Monday through Saturday
Relief Day (7-day positions)—
Permanent or Temporary—Permanent
Vacated by—Mrs. G. L. Herrin
Bond Requirements—None

attributes of management." The Award goes further and says that when employees seek to reverse the judgment of the management the burden is upon them to show fraud or caprice. Employees, in their claim, do not allege that assignment of the position involved was a result of fraud or caprice, but simply claim that the applications of the two senior employees were not even considered, which is incorrect.

This claim boils down to an attempt on the part of employees to substitute their judgment of fitness and ability for that of the management, something that not even your Honorable Board will undertake.

Carrier submits that not only were all applications given serious and careful consideration, but all applicants were given opportunities to demonstrate their abilities as to a part of the work involved. One either could not do the work or refused to attempt it and demonstrate that he could; another attempted it and failed; the third, who was assigned to the position did the work and was given a grade of 90% correct as against 0 for the others. The abstracts were fair samples of the work and all were given the same. In addition to the abstracts given to these gentlemen to figure, there are other attributes of the position and to fitness and ability which only the management has opportunity to observe and arrive at conclusions upon, and, having given serious consideration to all factors involved, arrived at the judgment as to fitness and ability of the applicants. This judgment, the sole prerogative of the management, should not be disturbed. To hold otherwise would be seriously detrimental to carrier's operation.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this claim are that L. G. Hendrix, I. R. Elledge and B. H. Everett bid in a position of Interline Freight Clerk-Utility. The position was assigned by the Carrier to Everett whose seniority date was December 6, 1926, while the seniority date of Hendrix was May 2, 1923, and Elledge's was November 1, 1923. The claimant states that he had the fitness and ability to perform the job and also was the senior employee; that the Carrier violated Article 3 (g), (1) and (m) when he was not awarded the position.

Article 3 (g), (1) and (m) read as follows:

"(g) Employees 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.

"(1) An employee 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 employees drop back to the positions previously held and the position vacated through failure to qualify will be re-advertised."

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

After the three applicants bid in the position, the Carrier saw fit to give an examination to them. The Employees claim it was a fraudulent test and was not authorized under the contract and only embraced a small percentage of the actual work of the position. The Carrier states that the result of the test was "only part of the consideration, that Mr. Hendrix and Mr. Elledge did not have sufficient fitness and ability to be assigned to the position in question. Their general aptitude, as previously observed, was also considered."

There is no rule in the effective Agreement prohibiting the Carrier from giving a test, and all inherent rights of management that the Carrier has not contracted away, remain with it.

Article 3 (g) gives to the Carrier the right, in the first instance, to determine fitness and ability for employees in line for promotion; if they possess fitness and ability, seniority shall prevail. If the employee feels that he has the fitness and ability and it is not recognized by the Carrier's head of the department, who shall be the judge, he has the right to appeal. However, this rule does not grant the right of a hearing, as claimed by the Employees. Under Article 3 (1), after the employee is placed in the position by the Carrier, he then has the sixty days, as stated, in which to qualify. Under Article 3 (m), the employees are entitled to full cooperation of department heads and others in their efforts to qualify.

The service record of the claimant is set forth in the Employees' submission; letters are set forth, stating what other employees think of the claimant's fitness and ability to handle the bid-in position. But under the rule, the head of the department shall be the judge, with the right of appeal. Appeals were taken by the claimant and they were denied. The papers asked of the Carrier were furnished the claimant on which to base his appeals. The claimant has the burden to show this Board that he did possess the fitness and ability to perform the work of this position. This he has failed to do. And he has also failed to prove that fairness and good faith have been violated or that a decision on fitness and ability has been fraudulently, capriciously or unreasonably made by the Carrier. Award 2031. No such showing has been made in this record.

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

Carrier has not violated the contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.