

Award No. 5265

Docket No. CL-5287

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**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated rules of the Agreement governing the employees' hours of service, working conditions and rates of pay, effective December 1, 1943 and amended July 1, 1945:

1. When Management denied request of C. L. Ordway, senior applicant for position of Assistant Supervisor, Machine Operation, rate \$330.00 per month, in the Accounting Bureau, Office of District Accountant, Hornell, New York, advertised by Bulletin 749, dated August 3, 1949 and awarded the position to W. B. Geary, a junior applicant by Bulletin 749, dated August 4, 1949.

2. That Mr. Ordway be assigned to the position described by Bulletin 749 mentioned in Item 1 hereof, and

3. That C. L. Ordway be compensated for all wage loss sustained from August 4, 1949 to date he is assigned to the position of Assistant Supervisor, Machine Operation, in the Accounting Bureau in accordance with his application therefor. (File 888.)

EMPLOYEES' STATEMENT OF FACTS: An Accounting Bureau in maintained by the Carrier at Hornell, New York in charge of District Accountant, Mr. C. H. Artman. The personnel of this Bureau consists of eight positions such as Statistician, Chief Clerk, etc., as tabulated on page 7 of our printed Agreement with Carrier, all of such designated as X-3 and as such subject only to certain rules of our Agreement with the Carrier as specified in the printed Agreement, page 3. There is also employed in this Bureau approximately 143 clerical workers subject to all rules of the Agreement.

In August 1949 Management established two additional lead or supervisory positions in the Bureau. One was classified as Assistant Supervisor—Machine Operation, rate \$330.00 per month, with hours of service 8:00 A. M. to 5:00 P. M., five days per week, Mondays through Fridays. (Employees' Exhibit 1.)

The other position was classified as Accounting Machine Operator (leader) rate \$330.00 per month, hours of service 4:45 P. M. to 1:15 A. M., five days per week, Monday through Friday, inclusive. (Employees' Exhibit 2.)

The instant case was reviewed by the Auditor of Disbursements, the Vice President and Comptroller and the Assistant Vice President in charge of Labor Relations. The employees were given an opportunity to present their case to each of these company officials.

The decision in each instance after careful review was that no rule of the agreement had been violated and that the appointment should stand.

In the Opinion of Board, in Third Division, with Mr. Edward F. Carter, Referee, Award No. 3188, Docket No. CL-3074, the following was expressed:

"The fact that four officials of the Carrier have concluded that he lacks the essential requirements of the position, although not conclusive, is itself indicative of his inability to obtain the confidence of his subordinates, associates and supervisors. There appears to be no evidence of bias or prejudice which manifested itself when the position sought was denied him. The Carrier, of course, is responsible for the selection of competent employees and we will not lightly overturn its judgment in the matter. The rejection of Claimants' application to displace the occupant of the position of District Chief Inspector by virtue of his seniority, seems to have been done in good faith and with the interests of the Carrier in mind. Such being the case, the claimant has not made a case that warrants the interference of this Board."

See Third Division Awards 4371, 4530 and 4537.

In the "Opinion of Board" in Fourth Division Award No. 660, Docket No. 651, with Referee Thomas C. Begley, wherein a similar case was decided, the Board ruled "Under this rule, seniority governs only where fitness and ability are equal. It is the Management's prerogative to judge fitness and ability." (Underscoring ours.)

This claim is without merit and should be denied for the following reasons:

1. The Carrier in assigning Geary did not violate any rule of the existing Agreement.
2. Assignment was made strictly based on experience, fitness and ability after giving due consideration to the application of claimant.
3. Claimant Ordway, during a period of 18 years made no effort to qualify as a supervisor nor to learn the control and operation of new type machines as they were developed and installed from time to time.
4. There is no showing that the awarding of the position involved bias, prejudice or capriciousness.
5. Third Division Awards 2491, 3151, 3188, 4371, 4530 and 4537 and Fourth Division Award No. 660, all apply to like circumstances.

OPINION OF BOARD: By bulletin dated August 3, 1949, Carrier advertised a newly created position of Assistant Supervisor, Machine Operator, in the Accounting Bureau, Office of District Accountant, Hornell, N. Y. Claimant filed a bid in response to this bulletin but the position was awarded to a junior employee. On the same date another position of Accounting Machine Operator (Leader) was advertised and was awarded to Claimant, he having bid on both positions.

The promotion rule in the applicable Agreement is the same as that found in many of the Agreements between the Clerk's Organization and other Carriers. It provides that promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Under this rule, as has been clearly established by many awards of this Board, it is

not the comparative fitness and ability of candidates for promotion to a particular position which should govern Carrier in making its selection. Even though a junior employee should have qualifications demonstrably superior to a senior employee, the rule requires Carrier to award a bulletined position to the senior applicant if he has sufficient fitness and ability.

The Carrier has the right in the first instance to determine the sufficiency of the fitness and ability of the employees who apply for promotion under the rule here involved. This Board will not interfere with the judgment of the Carrier in the absence of a showing of arbitrariness or capriciousness in its exercise. In this instance, two promotions both paying the same wage, both requiring substantially similar knowledge and background (as indicated by the wording of the two bulletins) were advertised on the same day. The same Carrier officer considered applicants for both positions and awarded one to the junior employee and the other to the senior. In explaining his action to Employees' Division Chairman, the Carrier officer stated that in making appointment to the leader position Claimant was considered as well qualified as the balance of the bidders for this position and because there were no others in the Bureau better qualified to handle the position, it was awarded to him. As to the Assistant Supervisor's position, he stated that he had selected the most capable employee when he assigned Mr. Geary to the position. It is apparent from these statements of the appointing officer that he did not apply the correct standard in making these appointments. On the basis of this record, we can only conclude that the Carrier disregarded the provisions of the Agreement in turning down the Claimant's bid for the Assistant Supervisor's position. Claimant's record as of the date the appointment was made and the fact that, at that time, Carrier adjudged him capable of filling the Leader position (a position of like responsibility and requiring similar skills as pointed out above), indicate the sufficiency of Claimant's fitness and ability for the Assistant Supervisor's position when the selection was made. It follows that a sustaining Award is in order.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of March, 1951.