

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Hubert Wyckoff, Referee.

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**  
**THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY**

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

(1) That the carrier violated the Clerk's Agreement when, effective May 1, 1948, per Addendum Bulletin No. 111 issued April 30, 1948, it assigned Peter S. Doyle to the vacancy covered by Bulletin No. 111 dated April 29, 1948 and declined and refused to consider the application made and submitted by senior employe F. M. Hammond, and

(2) That senior employe F. M. Hammond shall now be assigned to the position described in Bulletin No. 111 and be compensated for all monetary loss sustained.

(3) That other employes affected by reason of this violation shall likewise be compensated for monetary loss sustained retroactive to May 1, 1948.

**EMPLOYEES' STATEMENT OF FACTS:** On April 29, 1948 Assistant Auditor of Receipts, Mr. B. H. Beazley, issued Bulletin No. 111 advertising for bid position of Freight Division Clerk in the Auditor of Receipts Office, Nashville, Tennessee, copy of which is attached hereto as Employees' Exhibit No. 1, and from which it will be observed that by mutual agreement between the Local Chairman and the officer whose signature appeared thereon, applications were restricted to those received up to 10:00 A. M., April 30, 1948.

Within the time period fixed by agreement for receiving bids, written applications were properly made by employes Peter S. Doyle, with seniority of December 16, 1943, and F. M. Hammond, with seniority of May 12, 1942, and copies of same are attached hereto as Employees' Exhibits Nos. 2 and 3, respectively.

Immediately after submitting his written application on April 30th for the position in question Assistant Auditor of Receipts, Mr. B. H. Beazley, suggested to senior applicant Hammond that he withdraw his bid, and on the employee's declination to do so he was told by Mr. Beazley that he could leave his bid if he wanted to but it would not do him any good as he would not get the position anyway, which is affirmed by employe Hammond's letter of May 6th to Local Chairman Freeman, copy of which is attached as Employees' Exhibit No. 4.

**Award 3466:** "It is the duty of carrier, as heretofore pointed out in the first instance to determine the fitness and ability of the applicant. After the carrier has determined that a senior applicant lacks sufficient fitness, the burden is upon such applicant to establish that he possesses sufficient fitness and ability to occupy the position. We cannot substitute our judgment for that of the carrier in matters of this kind. Our function is limited to a review of the carrier's decision to ascertain whether it was made in good faith upon sufficient supporting evidence or whether it was the result of capricious or arbitrary action without reasonable support in the record before us."

It is obvious from the Findings of the Board in the awards above referred to, that under the rule here involved, when the Assistant Auditor of Receipts and the Local Chairman disagreed as to claimant's fitness and ability for the position in question, the Assistant Auditor of Receipts was the proper one to make the decision and that unless it can be proven that in making his decision, he was capricious, arbitrary or unreasonable, there is no basis for claim on behalf of claimant.

The determination of this case therefore hinges on whether the Assistant Auditor of Receipts' action in awarding the position to the junior applicant instead of to Claimant, was capricious, arbitrary or unreasonable.

Carrier submits the Assistant Auditor of Receipts in making his decision in this case was not influenced by prejudice or favoritism and that his action was not capricious, arbitrary or unreasonable.

\* \* \*

In view of the foregoing, Carrier contends:

1—That the Assistant Auditor of Receipts did not refuse to consider Claimant's Application for the position covered by Bulletin No. 111.

2—That the controlling rule in awarding the position, Rule 5 titled Promotion, Assignments and Displacements, was not violated when the Assistant Auditor of Receipts awarded the job to the junior applicant, based on his decision that Claimant did not have sufficient fitness and ability to entitle him being awarded the position.

It is therefore Carrier's position that there has been no contractual violation in this case, therefore, no basis for the instant claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim involves the rights of a senior employee under Rules 5, 6 and 10 to a vacancy filled by the assignment of a junior employee.

Both employees worked in the same seniority district: the senior in the Passenger Receipts Department and the junior in the Freight Receipts Department.

On April 29, 1948 the Carrier issued Bulletin No. 111 advertising for bids a position of Freight Division Clerk, the duties being listed as follows:

"Percent interline received abstracts for Memphis, Cordova, Paducah, Metropolis, Shelbyville and Centreville Branch, Sparta Branch and Tracy City Branch stations. Check divisions of revenue on foreign road abstracts, Nashville A-C and D-K books and overhead, Illinois Central book. Handle all claims and correspondence related to these settlements."

Two applications were received; one from Peter S. Doyle, seniority date December 16, 1943; and one from Claimant, seniority date May 12, 1942.

Claimant was employed May 12, 1942 as extra Passenger Ticket Clerk, which assignment consisted of arranging and checking foreign road tickets, compiling estimated passenger train earnings, checking conductors' cash fare receipts, and assisting other Passenger Ticket Clerks in drawing off reports to Foreign Roads. All of his experience up to the time he bid on the job here involved had been in the Passenger Receipts Department. He had no experience in the Freight Receipts Office. The Freight Accounting work is different and more difficult than the Passenger Accounting work. The position in dispute was one of seven similar positions, four of which were above it and two below it.

The junior employee was employed December 16, 1943. He was assigned to Waybill and File Clerk Desk, Interline Bureau of the Freight Accounting Department, which assignment consisted of arranging waybills in certain order and then filing and binding in book form. He performed this work until February 1, 1945 when he bid in position of Report File Clerk, Interline Bureau. The assignment on this desk consisted of arranging and binding various reports, i.e., abstracts, recaps, summaries, card reports, scale reports, agents' reports and record of corrections. He performed this work until December 16, 1946 when he bid in position of Freight Rate and Division Clerk. The assignment on this desk consisted of verifying divisions of revenue, extensions and additions on MC&StL received, Nashville forwarded, ACL and IC overhead abstracts and assisting in filing division sheets. He was on this position when he was awarded the position of Freight Division Clerk advertised under Bulletin No. 111.

**FIRST:** There is sharp conflict in the record on the issue whether Claimant was denied the position for the sole reason that he had not had any previous training or experience as a Freight Division Clerk. Viewing the record as a whole, there is no doubt that the Carrier took that fact into consideration, but we are unable to conclude that it was the sole reason for the denial.

It is true that, under a rule such as Rule 5, there is a violation if the junior was assigned because he had experience and not because the senior was not sufficiently qualified, or if both were sufficiently qualified but the junior was immediately better qualified to assume all of the duties of the position with little or no training or help (See USRRLB Decision No. 2639 and Awards 2427, 2534, 3139 and 4026).

But it is difficult to conclude on this record that the Carrier was unreasonable in determining that Claimant was not sufficiently qualified for the position, although the question would be a closer one if the position had been the lowest one in the group of seven similar positions instead of two above it. The Carrier is under no obligation to undergo the hazard and expense of the qualifying period provided by Rule 10, unless the senior has something more to offer than potentiality (Awards 1147, 2142, 3273, 4746 and 4918).

**SECOND:** The responsibility for the selection of employees and their promotion is the Carrier's; and we should not substitute our judgment based on paper for the Carrier's first hand judgment, except upon a showing of abuse of discretion (Awards 592, 1147, 2142, 3151, 3273, 3480, 4466, 4746, 4918, 5006, 5007 and 5025). We are unable to conclude that there was a sufficient showing here to upset the Carrier's determination.

**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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.