

Award No. 5326
Docket No. CL-5362

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated and continues to violate the rules of the Clerks' Agreement through its action in declaring Mr. Wesley Mack disqualified from the position of Tariff Compiler at San Francisco, California on April 6, 1949.

(b) Mr. Mack be reinstated to the position of Tariff Compiler and be given an additional 30 days' in which to qualify, with full cooperation of department heads and others.

(c) Mr. Mack be compensated for a day's pay at the rate of Tariff Compiler for each day he has been denied the opportunity to fill this position subsequent to April 6, 1949.

EMPLOYEES' STATEMENT OF FACTS: Mr. Wesley Mack entered the service of the Carrier on April 27, 1948. He subsequently filed application for position of Tariff Compiler advertised in Traffic Department Bulletin No. 12, dated February 24, 1949 (Employees' Exhibit "1"), and was assigned to that position through Mr. M. E. Boyd's Circular dated March 8, 1949.

Through Mr. Boyd's letter of April 6, 1949 (Employees' Exhibit "2"), Mr. Mack was advised that he was disqualified as of close of business that day.

Mr. Mack thereupon requested and was granted an investigation which was held on April 20, 1949, the transcript of which is herewith identified as Employees' Exhibit "3".

Mr. Boyd advised Mr. Mack through his letter of April 27, 1949 (Employees' Exhibit "4") that "there was nothing developed at the hearing which indicated any unjust treatment of yourself by either the officers or employees of this railroad, nor was anything developed which would indicate that your disqualification from the position of Tariff Compiler was improper."

Formal claim was thereupon filed with Mr. Boyd on May 3, 1949, (Employees' Exhibit "5") which was denied through his letter of May 10, 1949 (Employees' Exhibit "6"), after which it was appealed to Mr. H. R. Fegley, Assistant to General Manager on May 18, 1949. The claim was

- (1) The testimony introduced by three qualified and competent witnesses prove beyond any doubt that Mack was not qualified and did not make the necessary effort on his part to qualify for the position of Tariff Compiler.
- (2) Mack being dissatisfied with the action taken by Carrier in notifying him that he was disqualified, and pending the process of his appeal through regular channels, has made no effort to obtain any position for which he is qualified in accordance with his seniority, electing to work for another carrier at higher rate of pay than available to him on this property, even on the position of Tariff Compiler.

(Exhibits not reproduced.)

OPINION OF BOARD: The principal question here is whether Respondent had violated that part of Rule 30 of the Schedule styled "employees shall be given full cooperation", etc.

We think the rule means both employe and those from whom such employe seeks information and knowledge must act, that is the employe must make intelligent and not captious inquiries, the other party or parties must not give a light or frivolous reply to an inquiry, neither should directions to execute duties be given in such manner as to render them difficult to perform or as to be incomprehensible. In short all parties concerned have a duty to conduct themselves as ordinary and reasonable ladies and gentlemen would under similar circumstances.

The hearing officer held Petitioner had been given full cooperation by all necessary and proper parties. The problem facing this Board is to determine, after reviewing the transcript and all other relevant evidence, whether there was evidence upon which to reasonably base such finding. We think unless it be clearly shown that Carrier acted in an unreasonable, arbitrary, and capricious manner the finding should not be disturbed.

We do not think we could reasonably hold that any fellow employe or superior in rank acted in the manner above described and that Petitioner was under no duty to seek a correction of real or fancied acts of non-cooperation on the part of others.

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 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

That the Schedule 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 12th day of April, 1951.