

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, amended September 1, 1949, particularly the Scope and Paragraph III-2-A of Supplemental Agreement "A", by appointing Mr. J. F. Boyle, Engineman, Pittsburgh Division, to position of Examiner, Labor & Wage, Eastern Division, rate of Pay \$362.99, effective July 1, 1951.

(b) H. N. Tawney, a clerical employe of the Eastern Division, with seniority standing on the Seniority Roster, Group 1, Eastern Division, be paid a day's pay at the above rate of pay as a penalty for each day from July 1, 1951, until the violation is corrected. (Docket C-670.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant, H. N. Tawney, was the incumbent of regular position of clerk, Symbol No. F-116, located at the Ticket Office, Canton, Ohio, first trick, rest days Saturdays and Sundays. The Claimant has seniority standing on the Seniority Roster of Clerical, Other Office, Station and Storehouse Employes of the Eastern Division in Group 1 as of 3-18-15.

stitute a violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: Other rules are put in issue by the submission, but none is as compelling as Rule 1-A-1 which reads:

"Employees will be considered for promotion to excepted, supervisory or official positions as opportunity may offer."

Carrier says it complied with that rule and petitioner disputes this as a fact. Hence, we have a mixed question of fact and contract interpretation.

The record shows there were 6 new examiner positions to be filled by qualified employes. Carrier selected clerical employes for 2 of the 6 positions and filled the one in question with a non-clerical employe.

Petitioner contends no showing has been made by Carrier that it considered employes who have rights under the agreement before assigning one who holds no seniority and earns none in the excepted position. It is urged in the brief on behalf of petitioner that the job openings presented an opportunity for promotion "to a majority if not practically all of the 564 employes in the involved seniority district, to say nothing of the thousands of other clerical employes covered by the same agreement at other points on the railroad."

Even so, the rule does not say that carrier is under a duty to do more than "consider" employes whose rights are fixed by agreement for positions like the one in dispute. The excepted position is one to which seniority does not apply and carrier is left free to select "persons whom, in its own judgment, it considers best qualified to fill such positions."

The purpose the rule serves is self-evident. The employes, after surrendering the right to assert their seniority for assignment to an excepted position wanted, and were granted, some assurance that employes under the contract would not lose all opportunity for promotion to excepted, supervisory or official positions if qualified. That is different from saying, however, that one not qualified has cause to grieve or that petitioner can recover reparations as a penalty claim without any showing whatsoever that carrier has by-passed a qualified employe.

Carrier tells us, "the clerical forces were carefully surveyed". The record shows that for two of the positions clerical employes were selected so it cannot be said that no consideration was given clerical employes. Admittedly claimant was not qualified.

Not being called upon, therefore, to adjust rights between qualified persons, we are unable to say that carrier did not give consideration for promotion to employes under the contract, or that it did more than place "persons whom, in its own judgment it considers best qualified to fill such positions". The record, then, does not support or justify a finding that the agreement was violated.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1956.