

Award No. 8075
Docket No. CL-7616

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement when on June 25, 26 and 28, 1953, it worked junior clerks overtime in preference to senior clerks in the agency at Jacksonville, Florida, when said senior clerks were willing, available and qualified to perform the work.

That, as a penalty for the Agreement violation, Chief Revision Clerk H. G. Jackson and Assistant Cashier Emerald Hall each be paid at the punitive rate of their respective positions, four hours for June 25; four hours for June 26 and six and one-half hours for June 28, 1953.

EMPLOYEES' STATEMENT OF FACTS: It became necessary in June 1953 for Carrier to have information showing uncollected freight charges due by a consignee on solid cars of phosphate rock moving from Brewster, Florida, to Jacksonville, Florida, during the period July 1950 to May 1953 to use as evidence in a suit filed against the consignee. The information desired was in the form of a statement showing the freight bill number, date of bill, freight charges, P. T. tax, amount paid by consignee on freight charges, amount paid by consignee on P. T. tax, date, number and amount of consignee's check and the amount of uncollected freight and P. T. tax.

This was work over and above the usual and normal work of the agency and required that overtime be made to complete it within the time limit allotted for its preparation and completion. Upon learning that such a report was required, Claimants orally requested that they be used to assist in its preparation and make a portion of the overtime. They then wrote the Agent and requested that they be used in preference to junior employees who might be assigned to perform this work basing the request on their experience and seniority. These letters follow:

Jacksonville, Fla. June 23rd, 1953

Mr. B. S. Whaley, Agent,
Seaboard Air Line RR Co.
Jacksonville, Fa.

Dear Sir:

I understand there is to be considerable overtime paid this week end preparing a report of undercharges due S. A. L. RR. by Wilson & Toomer Fertilizer Co. for Auditor of Revenues Office.

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ability to satisfactorily perform the work sought. It is incumbent upon petitioner to prove otherwise. The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance. See Awards 2577, 3477, 3523, 4011 and 5758.

Carrier affirmatively states that all data used herein in support of Carrier's position has been submitted in substance to the organization's representative.

(Exhibits not reproduced)

OPINION OF BOARD: On or about June 24, 1953 Carrier's Jacksonville, Florida agency was instructed to prepare a special statement covering freight charges allegedly due from a customer over a three year period. The report was to be prepared by hand in triplicate and submitted within five days (later extended by three days) to Carrier's Auditor of Revenue so that court action could be taken. The Chief Clerk at Jacksonville conferred with the Agent there concerning "the clerks best qualified and suited to perform the work satisfactorily," according to the Carrier. Clerks Richards, Smitherman and Milligan were selected and assigned to this task. Because of the stated time limit, part of this work was performed during overtime hours. Learning that overtime duty would be involved, Claimants Jackson and Hall (holding positions of Chief Revision Clerk and Assistant Cashier respectively) made timely request to be assigned to this project on an overtime basis. Their request was denied.

Carrier contends the Claimants were not qualified for this work. Organization asserts they did possess sufficient qualifications for the work and that by virtue of their greater seniority they should have been given the overtime duty instead of Clerks Smitherman and Milligan who admittedly were junior in seniority. Petitioner relies on Agreement Rules 6, 57 (f) and 58—all of which are quoted in its submission—and on various cited awards of the Board.

It is conceded that the overtime work in question was not the regular work of any position at the Jacksonville agency. But in any event, the principal question to decide here is whether Carrier acted properly in determining the Claimants were not qualified for the disputed work. If Carrier's action was valid in this respect the aggrieved had no claim to the work irrespective of whether seniority is to be considered in making overtime assignments.

In the absence of an Agreement rule to the contrary, we have repeatedly held that the exercise of judgment concerning the qualifications of an employee is the responsibility of the Carrier, and that the Board will not set aside Management's judgment in this respect unless there is a showing that it has been exercised in an arbitrary, discriminatory or capricious manner.

The Carrier's stated reason for denying Claimant Jackson's request for the overtime work is that he made too many errors in his work. The reason given for Claimant Hall is that his handwriting is not sufficiently legible. In view of the nature and importance of the special report, and the use to be made of it, we are of the view that the Carrier made an informed and impartial judgment concerning the Claimant's qualifications. There is evidence to support Management's conclusion. There is no indication whatsoever that the Carrier's action was discriminatory or capricious. Since the Claimants were properly determined to be not qualified for the particular assignment in dispute, it follows that the claim is without merit.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1957.