

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Sidney A. Wolff, Referee**

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**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, 1952, except as amended, particularly Rules 2-A-2 and 2-A-3, by failing to award position SE-T-30, located in the Office of Supervisor of Regional Expenditures, Central Region, Pittsburgh, Pa., to R. E. Grabowsky, the senior bidder.

(b) R. E. Grabowsky, the Claimant, should be assigned to position SE-T-30, and, as a penalty, be compensated for any monetary loss sustained because of this violation from March 29, 1954, until adjusted. (Docket C-721)

**EMPLOYEES' STATEMENT OF FACTS.** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees 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, except as amended, covering Clerical, Other Office, Station and Storehouse Employees 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 hereof may be referred to herein from time to time without quoting in full.

Bulletin No. 18, posted by the Supervisor Regional Expenditures, dated March 19, 1954, provided that:

"Bids for the following positions in the Supervisor Regional Expenditures Seniority District, tour of duty 8:20 A. M. to 5:00 P. M., 40 minute lunch period, 5 days per week, days of rest Saturday and Sunday will be accepted by the officer named below until 5:00 P. M."

(c) When conditions develop so that an employe cannot satisfactorily perform the assigned work, he will be permitted to exercise seniority under Rule 3-C-1, subject to agreement between the Management and the Division Chairman.

(d) Employes will be given full cooperation of the department heads and others in their effort to qualify."

Since the Employes did not refer to this rule during the handling of the claim on the property the Carrier is without knowledge of what argument they now intend to make. Under the circumstances of this case it is difficult to understand how any violation of the Rule can be alleged, for your Honorable Board has held many times that it is the prerogative of the Carrier to determine whether an employe has sufficient fitness and ability to fill a position. See Award No. 6028 referred to above. Furthermore, Rule 2-A-3 obviously has no application in the present case since Claimant was not "awarded a bulletined position", a condition which, insofar as here pertinent, would be necessary to bring Rule 2-A-3 in to play.

In view of all of the above, it is respectfully submitted, that the claim in the instant case should be denied.

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

**CONCLUSION**

The Carrier has shown that its refusal to award the disputed Card Marker position to Claimant on the basis that he was not qualified was in accordance with the provisions of the applicable Agreement and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant, whose seniority is 2-23-43 contends that the Carrier violated the Rules Agreement when it awarded position SE-T-30 to Ruth A. Cullinan, six months his junior. The Rule in particular relied upon by the employes is Rule 2-A-2(a) reading:

"In the assignment of employes to positions subject to the application of the provisions of Rules 2-A-1 and 3-C-1, fitness and ability being sufficient, seniority shall govern."

This Board in passing upon similar cases has formulated certain principles, the most basic of which is that it is the prerogative of Management to determine fitness and ability of applicants and that this Board will not substitute, on a paper record, its judgment for that of the Carrier unless it can be shown that the Carrier's action was an abuse of discretion.

A good exposition of the applicable principles are set forth in Award 3273 (Carter) here reiterated:

"It is the function of management to select competent employes. Except when it has limited itself by contract, the right to selection is wholly within the discretion of management. Award 3151. Under the cited rule, the Carrier has the right to determine in the first instance the fitness and ability of applicants for the position. Award 2427. Fitness and ability for promotion to a position of greater responsibility must be commensurate with the requirements of the position to be filled. Award 2990. Fitness and ability does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance. Award 2427. It means that the applicant must have such training, experience and character as to raise a reasonable probability that he would be able to perform all the duties of the position within a reasonable time, usually the qualifying period fixed by the Agreement itself. The Carrier is required under the rule to give the position to the senior applicant if his fitness and ability are sufficient and it may not properly insist upon the right to make the assignment to the applicant which it deems best qualified. Award 2534. After the Carrier has determined that a senior applicant lacks sufficient fitness and ability, the burden is upon such applicant to establish that he possessed reasonably sufficient fitness and ability to occupy the position. Award 1147. Where there is evidence, which if believed, is sufficient to sustain the Carrier's judgment that a senior employe lacks sufficient fitness and ability for the position sought, the judgment of the Carrier will not be disturbed. Award 3057. Otherwise stated, whether an employe possesses sufficient fitness and ability for a position within the meaning of the rule is a matter exclusively for the Carrier to determine and such a determination once made will be sustained unless it appears that the action of the Carrier was capricious or arbitrary. Award 2692."

In our opinion the evidence presented does not satisfy us that the Carrier was arbitrary in not assigning the position to Claimant.

We find on the record that Claimant lacked the basic ability and experience necessary to fill the position in question. In this connection it is not lack of experience in the particular job that is pertinent for if that were the guiding principle, no person could ever qualify for promotion to a new position; instead it is the Claimant's lack of experience in the general field of the work involved. We take particular note of the fact that he has not performed even basic time-keeping work for over seven and one-half years and that the Claimant through his own choice on at least three occasions selected the less responsible position of addressograph operator rather than the time-keeper position. Thus he himself eliminated any opportunity in that period to gain some of the basic knowledge and experience needed for the position SE-T-30.

This Board cannot conclude on the basis of the record as a whole that the action of the Carrier constituted an abuse of discretion.

**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 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 8th day of January, 1958.