

Award No. 8770
Docket No. CL-8337

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when in the office of General Freight Agent, Atlanta, Georgia, it failed and refused to consider the application of Claimant, Mrs. J. L. Burks, for position of Secretary to Assistant General Freight Agent, Mr. M. F. Dukes, and

(b) The Carrier shall now be required to assign Claimant, Mrs. J. L. Burks, to the position of Secretary to Assistant General Freight Agent, Mr. M. F. Dukes, and compensate her for all monetary loss sustained by reason of the Carrier's failure to so consider her application for the position aforesaid.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mrs. J. L. Burks, whose service age in the Carrier's General Freight Office, Atlanta, Georgia, dates from October 26, 1942, on April 20, 1954, made verbal application for vacant position of Secretary to Assistant General Freight Agent, Mr. M. F. Dukes. This application was confirmed in writing on the same date. (Employees' Exhibit "A".) Mr. Baker, Chief Clerk, whose duty is to assign applicants to vacant positions, was again addressed in writing by Claimant, Mrs. Burks, on April 29, 1954 (Employees' Exhibit "B").

Receiving no reply to her communications, Claimant, Mrs. Burks, on May 2, 1954, referred the matter to Division Chairman, Mr. Chapman (Employees' Exhibit "C"). The Division Chairman, under date of May 3, 1954, requested hearing in the matter of Claimant, Mrs. Burks' disqualification in line with "Procedure for Determining Employees' Qualifications". The Division Chairman's request went unanswered, and was repeated under date of May 14, 1954 (Employees' Exhibit "E").

The Division Chairman again traced the General Freight Agent for reply on July 7, 1954 (Employees' Exhibit "F").

they are available, are appointed to fill vacancies of secretary to officers in the Rate Department. For example, below is a record of some of the appointments made prior to April 1954:

Mr. T. L. Smith

July 1, 1948, Secretary to AGFA-Rates
(Now Officers Assistant in GFO)

Mr. J. E. Hawkins, Jr.

May 6, 1948, Stenographer
May 16, 1949, Secretary to AGFA-Rates
Sept. 16, 1953, Secretary to AFTM-Rates

Mr. C. W. Standard

August 16, 1948, Stenographer
February 1, 1950, Secretary to AGFA-Rates
Sept. 16, 1953, Secretary to AGTM
(Now Chief Clerk-Office of AFTM, Macon, Ga.)

Mr. N. J. Hannah, Jr.

May 21, 1936, Stenographer
August 2, 1949, Secretary to AGFA-Divisions
November 17, 1950, Secretary to AGFA-Rates

Mr. W. M. Copeland

November 29, 1950, Correspondence Clerk
June 16, 1953, Secretary to AGFA-Rates
(Now Assistant Tax Agent, Tax Department)

Mr. R. F. Nealey

July 16, 1953, Stenographer
October 1, 1953, Secretary to AGFA-Rates
(Now Secretary to FTM-Rates)

Mr. T. E. Hill

May 28, 1951, Stenographer
August 1951 to September 1953—Military Service
April 17, 1954, Secretary to AGFA-Rates

On appeal, it was the decision of the highest officer designated by the Carrier to whom appeal may be made that the appointment of Mr. Hill to the vacant position was in conformity with the provisions of Rule 15, and the request in behalf of Mrs. Burks was accordingly declined. Carrier calls attention to the fact that the parties have expressly provided in Rule 15 that such officer's decision shall be final.

The evidence of record does not support the claim in behalf of Mrs. Burks and, for the reasons set forth herein, Carrier respectfully requests that the claim be denied.

All pertinent facts and data used by the Carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim here is to require Carrier to assign the claimant to the position of Secretary to Assistant General Freight Agent, and

for compensation for all monetary loss sustained by reason of failure of Carrier to give proper consideration to application of claimant for such position.

The position involved here is an excepted position and the filling of a vacancy is subject to the provisions of Rule 15, of the effective Agreement between the parties. Such positions are not filled by seniority but on the basis of equality of qualifications, merit and capacity as between employees entitled to consideration. See Note 3—Rule 15.

The facts of record show that a vacancy existed in the position as alleged by Mrs. J. L. Burks, the claimant named herein. Mrs. Burks made verbal application of the position and was advised, prior to the filling of the vacancy, that it was the policy of Carrier to fill the position with a male secretary. The position later was awarded to a male employee. It will be noted that Rule 15 provides also that in addition to qualifications, the appointing officer shall be the judge in making the appointment, subject to appeal to the highest officer designated by the Carrier to whom appeals may be made, whose decision shall be final.

Under the provisions of Rule 15 of the agreement before us, and a thorough review of the record, we must conclude that Carrier has in no way abused its discretion in awarding the position nor is there any evidence Carrier acted arbitrarily in appointing a male to the position. Such requirement was made known to claimant before the position was awarded, and certainly is a requirement that Carrier may reasonably insist upon. Under the provisions of Rule 15, Carrier has the prerogative to require definite and specific qualifications which in the case here claimant could not meet.

The rule on which the Organization relies is clear and in no way ambiguous but this Board has no authority to substitute its judgment for that of the Carrier.

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 Employee involved in this dispute are respectively carrier and employee 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 Carrier did not violate the effective Agreement as alleged.

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 April, 1959.