

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

William E. Grady, Referee

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**PARTIES TO DISPUTE:**

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

**TENNESSEE CENTRAL RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier violated the Clerks' Agreement.

1. When on August 16, 1954, the carrier failed to assign G. J. Perry to the position of Interline Forwarded Rate Clerk, Desk No. 23 (Auditor's Office, Nashville, Tennessee), thereby refusing him the right to exercise his seniority rights to this position, this being the result of bulletin dated August 2, 1954, (File 4804), abolishing the job of Interline Forwarded Rate Clerk, Desk No. 13, which he held, allowing Mr. A. E. Lamberth to remain on the job although he had less seniority.

2. That Mr. G. J. Perry be assigned to the position of Interline Forwarded Rate Clerk, Desk No. 23, (Auditor's Office, Nashville, Tennessee), and be compensated for all monetary loss sustained by the carrier's failure and refusal to comply with the terms of the Clerks' Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** On August 2, 1954, five positions in the Auditor's Office, Nashville, Tennessee, were abolished by bulletin designated "File 4804" which bulletin follows:

**"ACCOUNTING DEPARTMENT  
— BULLETIN —**

Nashville 3, Tennessee,  
August 2, 1954,  
File: 4804.

Clerical Employees,  
Seniority District No. 1

awards of similar tenor by your Board both prior and subsequent to the one here referred to).

Opinion of Board in that Award reads in part:

"It is the function of management to select competent employees. Except where it has limited itself by contract, the right of selection is wholly within the discretion of management. This Board should hesitate to override the judgment of the Carrier on a matter of this kind and risk the inefficient performance of railroad operations. The present case is not one that warrants any interference by this Board with the decision made by the Carrier."

Your Board is here advised that there has been no change in the rules of the applicable agreement which in the opinion of Carrier are pertinent to the subject of qualification since date of the claim decided by Award 3151 referred to above.

As it has been shown that claimant employee, Mr. G. J. Perry, was not qualified for the position of Interline Forwarded Revising Clerk, and at no time in the handling of the case on the property has any substantial and competent showing been made that he was so qualified, and Carrier respectfully submits that the claim should be denied in its entirety.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The basic question is whether this claim is alive in view of events on the property. In terms, the claim concerns unfavorable application of the fitness and ability test to an employee seeking to displace into another job when his own was abolished.

The Carrier contends that the claim was adjusted, and in any event, is without merit. We confine our discussion to the first contention.

The Carrier is said to have acted arbitrarily when, on or about August 16, 1954, it refused to permit G. J. Perry, herein called "Claimant" to move from the abolished job of Interline Forwarded Rate Clerk, herein called "Rate Clerk" to the job of Interline Forwarded Revising Clerk, herein called "Revising Clerk", for lack of 'qualifications and requirements'.

Claimant, when his job of Rate Clerk was abolished first sought to roll to Revising Clerk. When this was denied, he sought and was refused various jobs and finally was approved for the job of File and Check Clerk on September 1, 1954. On September 3, 1954 he protested denial of Revising Clerk and asked the difference between the rate of Revising Clerk and the rate of File and Check Clerk.

The Organization's position was that Claimant's experience of over twenty years as Rate Clerk qualified him for a chance at Revising Clerk since the jobs were identical, both involving application of tariffs and, indeed, were so much alike as to override the distinction in job titles. The Carrier countered that as compared to Rate Clerk, the job of Revising Clerk was more complex, varied and exacting, as reflected in the job rate differential. The controversy was substantial.

On October 22, 1954 a meeting was held between the Organization's Committee and the Carrier's highest officer. Claimant was present. A job known as Overcharge Claims and Interline Clerk was vacant by resignation and was offered. This paid more than Claimant's then job and less than the job he sought. Claimant also was to have a trial period of sixty days rather than the thirty day period allowed by Rule 7 (c) of the Agreement. Claimant began the offered job on October 25, 1954. He was disqualified on December 21, 1954. On January 11, 1955 he filed the instant claim which, in substance, demands a declaration that he should have been allowed to move to Revision Clerk as of August 16, 1954 and should be compensated, the same matter dealt with at the meeting of October 22, 1954.

We think the Carrier's contention that this claim was set at rest on the property, is correct.

The meeting of October 22, was requested to discuss Claimant's situation and that was its focal point. After the offer of Overcharge Claims and Interline Clerk with an extended trial period was made at the meeting, Claimant is said to have asked, "What about my claim?" and there was no answer. This assertion first appears in a letter dated March 29, 1955, submitted by the Organization after the instant claim was filed. Taking this at face value, the Carrier did not answer, but significantly, neither did the Committee answer. Nor did the Committee say that the job offer was not enough or that the claim was reserved. Neither did Claimant.

No claim either for job or pay was advanced by the Committee in its meeting with the same Carrier officer on December 3, 1954, during which matters then pending were discussed. Not until after Claimant's disqualification from the compromise job, was this controversy resurrected on January 11, 1955 and then at first level rather than that at which it last had been handled on October 22, 1954.

On the facts presented, it is clear that there was a package adjustment of a mutually difficult problem. We shall deny the claim.

**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 the dispute was finally adjusted.

**AWARD**

**Claim denied.**

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

**ATTEST: S. H. Schulty  
Executive Secretary**

**Dated at Chicago, Illinois, this 28th day of June, 1960.**