

Award No. 9927
Docket No. CL-9813

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**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when it refused to permit Mr. F. M. Dodd, Jr., to exercise seniority to position of Manager Mail Room, Atlanta, Georgia.

(b) The Carrier shall now be required to permit Mr. F. M. Dodd, Jr., to exercise his seniority to position of Manager Mail Room, Atlanta, Georgia, and to compensate Mr. Dodd for all loss sustained by reason of Carrier's failure to permit Mr. Dodd to so exercise his seniority.

EMPLOYES' STATEMENT OF FACTS: 1. The Carrier's Mail Room, Atlanta, Georgia, is located in the General Office Building. The Mail Room constitutes a seniority district. The function of employees of the Mail Room is to receive incoming railroad and United States Mail, assort and deliver it to the proper offices and to properly rate, stamp and dispatch outgoing mail.

2. On November 8, 1956, there were three clerical (Group 1) positions in the Mail Room as follows:

Title	Rate	Occupant	Seniority Date
Manager	\$17.71	R. K. McKinnon	June 1, 1931
Clerk	16.77	T. L. Kimsey	April 7, 1949
Clerk	16.30	F. M. Dodd, Jr.	March 20, 1929

All positions had Saturday and Sunday as rest days. The hours of assignment were: McKinnon, Manager, 8:15 A.M. to 5:15 P.M.; Kimsey, Clerk, 5:00 A.M. to 2:00 P.M.; Dodd, Clerk, 8:15 A.M. to 5:15 P.M.

Effective with termination of assignment Friday, November 9, 1956, the position held by Claimant F. M. Dodd, Jr., was abolished. (Employees' Exhibit "A") Claimant Dodd thereupon sought to exercise his seniority rights and displace Clerk McKinnon, which the Carrier refused to permit Claimant Dodd to do.

to displace on a position if, in the judgment of the officer in charge, he did not possess sufficient qualifications, merit and capacity to fill the position.

There is nothing whatever in the record indicating that carrier has acted in an arbitrary, capricious or discriminatory manner in not permitting Mr. Dodd to displace Mr. McKinnon. The record clearly shows that Superintendent Moore was not the only officer who was dissatisfied with claimant's services, but that other responsible officers, over a period of several years, had expressed dissatisfaction with his services both as manager and as mail clerk in the general office mail room. In reviewing Mr. Dodd's record, it will be evident to the Board that carrier has been extremely lenient with him, rather than acting in an arbitrary, capricious or discriminatory manner.

In addition to the foregoing evidence that there has been no violation of the agreement, carrier respectfully points out that the claim for compensation asserted in part (b) of the statement of claim is not valid in any event. Carrier cannot be held responsible for any monetary loss sustained by claimant of his own volition. Mr. Dodd had every opportunity to displace on the remaining mail clerk position in the mail room within the 30-day period specified in Rule 21 of the effective agreement. The Superintendent so advised him personally on November 16, 1956. Had Mr. Dodd exercised his seniority by displacing on the mail clerk position occupied by Mr. T. L. Kimsey, who was junior to him, he would have actually earned 47c per day more than he earned on the mail clerk position he occupied prior to its abolishment. It was through claimant's own negligence that he failed to avail himself of rights granted him under Rule 21 of the effective agreement. Even though Mr. Dodd had filed claim that he be permitted to displace on the manager's position, he should have protected himself during the interim by displacing on the remaining mail clerk position within the 30-day period required by Rule 21. Therefore, it is evident that any monetary loss sustained by Mr. Dodd was through his own negligence, and of his own volition. This is clearly his responsibility, not the carrier's.

The evidence of record does not support the Brotherhood's claim that the agreement was violated or that claimant is due any compensation whatever. To the contrary, carrier has complied with all applicable provisions of the effective Clerk's Agreement. For the reasons set forth herein, the claim should be denied in its entirety.

All factual evidence submitted in support of carrier's position is known to employe representatives.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The Organization contends Claimant Dodd was entitled to exercise his seniority to displace in the mail room manager position at the subject location when Claimant's mail clerk position was abolished. The Carrier denied Claimant's request to exercise this displacement, on the ground that he was not qualified. There was another mail clerk position in which Claimant could have displaced pending determination of his claim but he did not do so.

Under the governing agreement language the Claimant's entitlement to the requested position is governed by seniority and qualifications. Claimant is senior to the incumbent of the mail room manager position.

It is the general rule, as established by awards of this Division, that in the first instance the employer must be the judge of the fitness and ability of an employe, absent any agreement provision to the contrary. No provision restricting this right of the Carrier appears in the Agreement that is controlling in this case.

Where, as here, it is shown that the Carrier has made a good faith determination that an employe is lacking in fitness and ability for a position, it becomes incumbent upon the employe to overcome that determination by substantial and competent proof. There is an entire absence in this record of evidence establishing that Claimant Dodd is qualified for the position he seeks. He had previously held this position but was demoted due to unsatisfactory performance. His subsequent performance as mail clerk provides no basis for concluding that he is qualified to satisfactorily handle the mail room manager position.

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 Employe involved in this dispute are respectively Carrier and Employe 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of April, 1961.