

Award No. 10691

Docket No. CL-9979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, 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 between the Parties when, at Atlanta, Georgia, effective January 1, 1957, it assigned E. L. Fritschel, G. R. Parker and F. M. Couch to position of "Electronic Coder" in the office of Auditor of Computer Accounting instead of assigning senior qualified bidders W. L. Leinmiller, W. L. Payne and E. L. Brockett.

(b) Claimants W. L. Leinmiller, W. L. Payne and E. L. Brockett shall now be assigned to positions of "Electronic Coder" in the office of Auditor of Computer Accounting and compensated for the difference between what they have earned and what they would have earned had they been assigned to positions of "Electronic Coder" effective January 1, 1957.

EMPLOYEES' STATEMENT OF FACTS:

1. Prior to October 15, 1956, in the Carrier's Accounting Department, Atlanta, Georgia, there were the following seniority districts:

Auditor of Freight Accounts
Machine Accounting Bureau (Auditor of Freight Accounts)
Auditor of Passenger Accounts
Auditor of Station Accounts
Assistant Auditor
Auditor of Overcharge Claims
Auditor Payrolls (Mr. M. F. Hawkshaw)

2. Early in 1955, it became apparent to the Employees that the Carrier was planning to install an "electronic brain", or machine, which would perform mechanically many of the functions then performed by employees fully covered by the Clerks' Agreement. Upon the insistence of employee

data processing methods would be necessary for assignment to the electronic coder positions was self-evident, otherwise they could not possibly assist the analysts and code the programmed instructions.

Carrier has shown that positions were filled in accordance with the provisions of agreement rules and the supplemental agreements reached by the parties on November 12, 1956. For the reasons stated herein, the claim should be denied and carrier respectfully requests that the Board so decide.

All pertinent facts and data used by the carrier in this dispute are known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: It is contended by the Carrier violated the Agreement between the Parties when at Atlanta, Georgia, effective January 1, 1957, it assigned E. L. Fritschel, G. R. Parker and F. M. Couch to positions of "Electronic Coder" in the office of Auditor of Computer Accounting instead of assigning senior qualified bidders, W. L. Leinmiller, W. L. Payne and E. L. Brockett.

In its submission to this Referee, the Claimants say, we quote:

"ISSUE: Whether Rule 16 — Filling Vacancies Under Seniority Rules (quoted p 37) was violated in the filling of the involved Electronic Coder positions, as contended by the Employes; or, whether Rule 15 — Promotion, Vacancies or New Positions Not Filled by Seniority (quoted pp 36, 37) applied, as the carrier contends."

We quote for ready references the pertinent parts of Rules 15 and 16:

"Rule 15 — Promotion, Vacancies or New Positions not Filled by Seniority (Revised, effective October 1, 1938) Promotions, vacancies or new positions (either excepted or schedule) which are not filled by seniority shall be filled as follows:

Qualifications, merit and capacity being equal, preference shall be given employes in the service in order of their service age, the appointing officer to be the judge, subject to appeal to the highest officer designated by the carrier to whom appeals may be made, whose decision shall be final.

NOTE No. 1: 'Service age' as used above begins on date employment relationship began on last entrance into company's service in the class or craft covered by this agreement."

"Rule 16 — Filling Vacancies Under Seniority Rules

"(a) (Revised, effective October 1, 1938) Except as otherwise provided in this agreement, Rules 7, 8, 9, 13, 14, 15 and 17 in particular, vacancies covered by this agreement will be filled in accordance with principles defined in Rule 15 (exclusive of the notes) in the following manner, except that merit, capacity and qualifications being sufficient, seniority shall govern:

The officer in charge where vacancy occurs will, within two days, bulletin such position to all employes of the group or class on the seniority district in which vacancy exists. Bulletin to show location, title, rate of pay, and preponderating duties of position, number of

hours assigned per day, and number of days assigned per week, subject to reduction in weeks in which holidays occur by the number of such holidays. Employees desiring such position must, within five calendar days (except in General Offices at Washington, Cincinnati, Atlanta, and Chattanooga, where the period shall be two working days) after bulletin is posted, make written application to the officer issuing the bulletin. The bulletin shall expire at twelve o'clock midnight on the fifth or second day, as the case may be. From these applications the senior qualified employee shall be assigned to the position within fifteen (15) days, and bulletin will be posted giving name of successful applicant. If requested, copy of all bulletins will be furnished Local Chairman.

"NOTE No. 1: The word 'sufficient' as used above is intended to establish the right of the senior qualified employees to be assigned to new positions or vacancies covered by section (a) of this Rule 16 over junior qualified employees."

The positions involved in this claim are new positions; they never existed before. The Claimants with others took a special course to try and qualify for the positions. The duties and responsibilities of these new positions came about by the use of new equipment. The only restriction on Carrier's right to choose among its employees to fill the six Electronic Coder positions at Atlanta is that such positions "will be bulletined in accordance with the provisions of the Clerks' Agreement to employees holding Clerical Seniority in the Accounting Department at Atlanta." And that the positions be offered to employees in the Accounting Department at Atlanta.

Clearly it is Rule 15 of the Agreement which covers the situation before us, and when Carrier bulletined the positions under Rule 15, it fully complied with the Clerks' Agreement.

Claimants contend that there was a serious procedural defect in the Carrier's handling of this claim on the property which denied Claimants the "due process" guaranteed them by Section (b) of Rule 40.

We find nothing in the record that justifies the contention of the Claimants. They were afforded a fair submission as required.

Finally, it is the contention of the Employees that the Carrier, in determining the standards of qualification allowed a third party, the I.B.M. to dictate those standards. With this we do not agree, the decision was that of the Carrier, and all that I.B.M. did was to conduct classes and related tests.

The claim must be denied.

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 as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1962.