

Award No. 12338
Docket No. CL-12110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4842) that:

(1) The Carrier violated the current Clerks' Agreement when on February 2, 1959, it failed to assign Mrs. Ida N. Semple, the senior applicant, to vacancy on position of Night Warehouse Foreman at Alexandria, Louisiana, and that its refusal to assign Mrs. Semple to such vacancy was arbitrary, capricious and constituted an abuse of the Carrier's discretion.

(2) Mrs. Semple shall now be compensated at the established rate of pay of the Night Warehouse Foreman position less the established rate of pay of other positions she has held for all time on and after February 2, 1959 that she is withheld from the assignment.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as representative of the class or craft of employes in which Mrs. Semple held a position and the Louisiana and Arkansas Railway, hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement effective April 1, 1943, revised September 1, 1949, November 1, 1949, and September 1, 1951, covering clerical, office, station and storehouse employes, between the Carrier and this Brotherhood, a copy of which we understand has been filed with this Honorable Board. This Rules Agreement will be considered a part of this Statement of Facts; various rules therein may be referred to herein from time to time without quoting in full.

Superintendent Canty, by his Bulletin No. 4, dated January 26, 1959, advertised for position of Night Warehouse Foreman, Alexandria, La.; hours 12:00 Midnight to 8:00 A.M., rest days Saturday and Sunday. (Employes' Exhibit No. 1.)

yet seniority cannot be applied in every case and do justice to the successful operation of the Railroad. Seniority cannot be applied irrespective of fitness and ability. The latter elements are of very great importance to the carrier. . . ."

AWARD 1824

" . . . It is also true that she sought no opportunity and made no independent effort to acquaint herself with the duties and responsibilities of the position. Nothing appears which would indicate that the Carrier activated itself in any manner to prevent Mrs. Miller from becoming acquainted with and acquiring fitness for the position. Whether the opportunity afforded Truett was at his instance or at the instance of the assigning authority is not made clear. We do not consider it of great importance.

We observe nothing in this to indicate that Mrs. Miller was unjustly treated in any matter not covered by the rules. In fine the record shows that, by greater industry and initiative, Truett acquired fitness for the position before it was open for assignment, whereas Mrs. Miller did not.

Since this specification of the claim deals with a matter not within the rules and must be determined in the light of reason and simple justice, we think it not out of place to say that on sound principle in the efficient operation of railroads, as well as in other industry, the rewards of advancement should go to those who, by attention, effort and ambition, have earned them."

AWARD 3537

"We find no evidence in this case that Carrier's officials were prejudiced against this claimant or that they unduly favored the employe assigned. We think also there was evidence in the record requiring the exercise of judgment which is sufficient to sustain the conclusion reached by the Carrier that Claimant did not have sufficient fitness and ability for the position sought. . . ."

Also see Awards 106, 324, 2058, 2990, 2997, 3057, 3151, 4040, 7070, and 8196.

Except as expressly admitted herein, the carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

The claim should be denied and the Board is respectfully requested to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: Mrs. Ida Semple, Claimant, responded to a bulletin of Carrier advertising the position of Night Warehouse Foreman at Alexandria, Louisiana. This was a five-day work position with the hours of 12:00 Midnight to 8:00 A.M. Although she was senior bidder, the position was awarded to a junior employe, Mr. W. C. Alford, Jr.

Mrs. Semple makes claim that Carrier, in denying her the assignment, acted in an arbitrary and capricious manner; and she requests payment from

February 3, 1959 of the difference between the salary of the position refused to her and the salary of her jobs. She argues that under Rule 7(a) the position was rightfully hers, because she possessed sufficient and adequate ability to perform the duties as Night Warehouse Foreman and that under Rule 14(a), she should have been allowed 30 days to prove her qualifications. She maintains that Carrier discriminated against her because of her sex.

Carrier denies that it acted unreasonably and arbitrarily. It takes the position that Claimant lacked the physical requirement necessary at times for the lifting and other heavy duties of this assignment; further, it asserts that there is no evidence to support Claimant's position that she had warehouse experience that would tend to qualify her for the Night Warehouse Foreman position. Carrier also maintains that under Rule 7(a) it has the right to determine the fitness and ability of an employe for a position. After deciding that Claimant lacked sufficient fitness and ability, there was no need to apply Rule 14(a), which provides for a 30-day trial period to determine an employe's qualifications.

The central issue in this dispute is whether Carrier acted capriciously in reaching its decision that Claimant lacked fitness and ability for the position for which she bid. Under Rule 7(a), Claimant's seniority establishes her right to the position, provided she has proper qualifications. Carrier, however, has the managerial prerogative of judging her fitness. If Petitioner's claim is to be sustained, she must present evidence to prove that Carrier's decision was unreasonable and constituted an abuse of discretion.

Petitioner contends that Carrier, in its initial denial of the claim, took the position that she was not qualified due to surrounding circumstances connected with the job. She points out that these circumstances, as the location of the warehouse, the night hours, and the fact that she would be the only woman among a force of male employes, are factors unrelated to fitness and ability. Claimant submits that action on these circumstances only is proof that Carrier was capricious and arbitrary and violated Rule 7(a). We recognize that such factors do not determine fitness and ability. We note, however, that in the initial denial Carrier also stated that Mrs. Semple lacked the physical requirements necessary for the position. We are convinced that Carrier included this factor in weighing her fitness for the position. Carrier also took into consideration Mrs. Semple's previous work record, which indicates that there is some question as to whether she actually had warehouse experience. The evidence she gave to support her claim to experience is not substantiated by Agent Dodson, under whom she worked for two weeks. He stated in a letter, ". . . Mrs. Semple has never qualified or worked at the job (Night Foreman) and there are physical requirements at times on this job that this lady could not take care of." Thus, we fail to find competent evidence presented by Claimant that Carrier acted capriciously in making its decision to deny her the assignment. Carrier's decision was made in good faith and was in exercise of judgment and discretion. Since Claimant was not eligible for the position, a 30-day trial period provided for under Rule 14(a) was unnecessary.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

The Agreement of the parties was not violated.

Claim denied.

AWARD

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.