

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-3 and 3-C-1 (a), when on July 9, 1956, it denied John J. Rutkowski, Clerk, the right to displace a junior employe on Clerical Position, Symbol E-151, Meadows Enginehouse, Meadows, N.J., New York Region.

(b) John J. Rutkowski be compensated for all monetary loss sustained beginning July 9, 1956, and until adjusted.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

Claimant John J. Rutkowski held a regular advertised position, Symbol E-140, as of July 6, 1956, at Greenville Car Shop, Jersey City, New Jersey. At the close of business on July 6, 1956, Position Symbol E-140, was abolished.

On July 9, 1956, Claimant Rutkowski endeavored to displace the incumbent of Position Symbol E-151, a junior employe, at Meadows Enginehouse, Meadows, N.J. The Claimant was denied the right to make this displacement. The Claimant has a seniority date on the Seniority Roster of the New York Region in Group 1.

its actions in the matter have been shown to be entirely in keeping with the letter and spirit of the Clerks' Rules Agreement and in no way arbitrary, capricious or discriminatory.

For the reasons herein given, no valid basis exists for a finding that any violation of the Clerks' Rules Agreement occurred in this case and, therefore, your Honorable Board is respectfully requested to deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: There is in evidence a "Joint Statement of Agreed Upon Facts" which reads:

"On December 22, 1953, Clerk J. J. Rutkowski, the Claimant, displaced William Grib from position Symbol E-151 at Meadows Enginehouse, Meadows, N. J. Neither Grib or the Claimant were ever required to perform stenographic duties.

On September 27, 1954, J. J. Rutkowski bid for and was awarded position Symbol E-140, Greenville Car Shop N. J.

On July 6, 1956, Position Symbol E-140 was abolished.

On July 9, 1956, the Claimant attempted to displace Clerk P. Bosco, the incumbent of position Symbol E-151 at Meadows Enginehouse. Clerk Bosco is a qualified stenographer. The Acting Foreman refused to permit him to work this position, he then appealed to the Master Mechanic, who also refused to permit him to work the position."

Petitioner contends that Claimant, having once satisfactorily performed the duties of the job here involved, should have been permitted to displace the incumbent through the exercise of his contractual seniority rights.

The bulletined duties of the position involved in this dispute are described as follows:

"Must be a competent stenographer and typist—must be qualified to handle various locomotive reports and records including cost control and production records, time cards and payrolls."

It is admitted that Claimant was not qualified as a "competent stenographer." The incumbent was.

There is no evidence here that the Carrier's refusal to permit Claimant to bump on the job sought was motivated by prejudice or discrimination. Petitioner's position appears to be based on the theory that the bulletin was not properly drafted insofar as the requirement of stenographic competency was concerned because it had not consistently demanded that the occupants possess and demonstrate such ability.

At this late stage in the development of railroad "case law," there should be no question that Carrier management is free to determine the way in which the work and operations are to be performed and conducted in the interests of economy and efficiency except insofar as that freedom may be limited by law or agreements with the representatives of its employees. (Awards 5803, 4799, 6967 are typical).

Here there is no contractual rule which impliedly or expressly limits this Carrier's right to set the qualifications of a particular job covered by the Agreement. The fact that the job in dispute had been occupied by some employees who lacked stenographic skills in no way constituted a waiver by the Carrier of its right to require those who sought to obtain the job to meet all the qualifications. Put another way, the Carrier in its discretion may have waived the stenographic requirements of the position from time to time but this, in and of itself, was no waiver of its right to demand of anyone seeking, or, indeed, occupying the job, that he possess all the required qualifications. This is not discrimination; it is a privileged exercise of managerial discretion.

The claim will, therefore, be denied.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.