

Award No. 12433

Docket No. CL-12138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, 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 (GL-4834) that,

(a) The Carrier violated the Agreement when Mrs. O. M. McKinnon, furloughed Clerk-Stenographer, Birmingham, Alabama, was held unqualified to occupy the position of Clerk-Stenographer in the office of Master Mechanic, Ernest Norris Yard, Birmingham, Alabama. The disqualification was effective Monday, May 18, 1959.

(b) Claimant, Mrs. O. M. McKinnon, shall be assigned to the Clerk-Stenographer position and shall be compensated at the established rate of pay thereof for Monday, May 18, 1959, and each work day thereafter that she is not permitted to work the position.

EMPLOYEES' STATEMENT OF FACTS:

1. Mrs. O. M. McKinnon has seniority date of November 25, 1943 as a Group 1 employe on the Birmingham Division. On the seniority list dated July 1, 1959, she is shown to be "furloughed".

2. On May 15, 1959, Mrs. Ogie Mae McKinnon notified Mr. C. A. Frick, Master Mechanic, Birmingham, Alabama, of her intention to displace Mrs. E. C. Caffee, Clerk-Stenographer, effective May 18, 1959. Copies of the notice were furnished to Mrs. E. C. Caffee, occupant of the position, and Mr. E. R. Johnson, Local Chairman (Employees' Exhibit A).

3. Carrier Officer C. A. Frick, Master Mechanic, desired to question Claimant McKinnon as to her qualifications. An "Interview to determine qualifications of Mrs. O. M. McKinnon exercising right to displace Clerk-Stenographer in Master Mechanic's Office, Norris Yard, Irondale, Alabama", was held May 27, 1959. A record of that "interview" was made and a transcript consisting of 17 pages was made. By agreement, the transcript of the interview will be furnished to the Board by the Carrier as a part of its Submission.

jurisdiction, that the officer had full knowledge of claimant's work in his office prior to February 1, 1959, and that claimant failed to demonstrate that she could satisfactorily perform the clerical and stenographic duties required on the one remaining clerk-stenographer position in the Master Mechanic's office, particularly the stenographic work of the abolished excepted position of secretary to Master Mechanic.

(Exhibits not reproduced.)

OPINION OF BOARD: As of January 1959, the clerical force in the Carrier's Master Mechanic's office at Birmingham, Alabama, consisted of an excepted position of Chief Clerk, an excepted position of Secretary, and a schedule position of Stenographer-Clerk. The Claimant held the latter position. Due to technological and operational changes there was no longer need for both the excepted Secretary position and the schedule Clerk-Stenographer position. Accordingly, on February 1, 1959, both positions were abolished and, in lieu thereof, a schedule position of Clerk-Stenographer was established to perform the combined duties of the two former positions. As set forth in the bulletin enumerating the duties of the newly established position appears the following:

"Applicant must be able to take and transcribe dictation at a rapid rate in order to act as alternate on taking investigations and correspondence in Office of Master Mechanic."

Mrs. Caffee, the holder of the abolished excepted position of Secretary, was the only employe holding clerical seniority to submit an application for the new Clerk-Stenographer position, and she was assigned to it in accordance with the provisions of Rule 16 of the effective Agreement.

The Claimant herein, Mrs. McKinnon, did not apply for the new position. Under the Agreement (Rule 21), she had a period of 30 days from January 30, 1959, in which to exercise displacement rights to any position to which both her seniority and qualifications entitled her. The record shows that there were several clerical positions at the Norris Yard office and the Birmingham freight station occupied by junior employes whom she could have displaced. She did not exercise displacement rights but notified the Carrier that due to poor health, she would be unable to exercise displacement rights.

Mrs. McKinnon wrote the Carrier on April 27, 1959, that she would be able to return to work on May 4, 1959, and that she planned to "start cubbing" on that date with the objective of displacing Mrs. Caffee on the one Clerk-Stenographer position in the office described above. The Master Mechanic personally informed the Claimant that in his judgment of her work in his office in 1957 and 1958, she was not sufficiently qualified to perform the stenographic duties on the position and that he could not permit her to displace the incumbent unless she could demonstrate that she was qualified to fill the position. Mrs. McKinnon observed the work of the position for several days and notified the Master Mechanic that she wished to displace Mrs. Caffee effective Monday, May 17, 1959. On May 27, 1959, a hearing was held to determine the Claimant's qualifications for the position in question. Thereafter, on May 30, 1959, the Master Mechanic notified the Claimant that he did not consider her qualified for the position and denied her the right to displace Mrs. Caffee thus giving rise to the instant case. Under the Agreement, Mrs. McKinnon had the right to protest the Master Mechanic's decision and to exercise her seniority rights to other clerical positions to which

her seniority and qualifications entitled her, but she refused to exercise such rights.

The issue in the case is whether or not the Carrier violated the Agreement by determining that the Claimant was not qualified to displace the incumbent on the job sought by Mrs. McKinnon. Under the Agreement, Claimant was entitled to observe the work of the position and she was given a hearing to determine her qualifications.

Carrier takes the position that the Master Mechanic was peculiarly able to judge Claimant's qualifications because he had observed her performance during her prior services under his jurisdiction and she was granted a hearing at which it was demonstrated to his satisfaction that she was incapable of taking and transcribing dictation with sufficient rapidity and skill to meet the requirements of the job.

The Organization counters that the Carrier discriminated against the Claimant in that, while she was given the form of an opportunity to observe the work of the job she was denied its substance, because her fellow employees did not cooperate, and were not helpful in teaching her what she needed to know. Further, that the dictation test was unfair, too rapid, peppered with difficult technical words and the Master Mechanic was personally prejudiced against her. In proof on the latter assertion, the Organization points to a remark he allegedly made on a prior occasion when he is supposed to have remarked that if she paid more attention to her work, made fewer complaints and paid less attention to the "damn contract", she would be a better employee.

The record contains both a verbatim reproduction of the passage dictated and the actual transcription of this passage by the Claimant. It cannot be disputed that the paragraph as transcribed by the Claimant had quite a few errors and was sufficiently garbled as to lose the sense of the original passage.

It cannot be seriously questioned that there was some hostility on the part of the Master Mechanic for Mrs. McKinnon; nor can it be doubted that the Claimant on her part, entertained some feelings against the said Master Mechanic. It may be significant to point out that the bulletin setting forth the duties of the job, quoted supra, emphasized the importance of being able to "take and transcribe dictation at a rapid rate * * *." If the major complaint of the Organization is that the dictation was "rigged" to assure the Claimant's failure, it would not have been impossible for them to demand a new dictation test. This was not done.

It can scarcely be argued that the ultimate determination of the applicant's qualifications rests with management. The personality problem that may have existed between the Master Mechanic and Mrs. McKinnon could have been by-passed if the Claimant would have bid for and accepted one of a number of other clerical positions to which her seniority and qualification entitled her. On the present state of the record, we have an applicant for a position which admittedly requires the ability to take and transcribe dictation at a rapid rate. Mrs. McKinnon's performance in the test she took demonstrates that she did not possess the skill necessary to satisfy the qualifications for the job in question.

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.

AWARD

The claim is 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.