

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**

LOS ANGELES UNION PASSENGER TERMINAL

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

1. The Los Angeles Union Passenger Terminal violated the Clerks' Agreement on April 27, 1958, when it refused to allow Clerk Pejsach Kupersztych to displace junior employe Arthur L. Thompson from Relief Position No. 1136, and;

2. The Los Angeles Union Passenger Terminal shall be required to compensate Clerk Pejsach Kupersztych eight hours compensation at the rates of pay of Position No. 1136 beginning on April 27, 1958, and continuing each date thereafter until he is placed thereon in accordance with the Displacement Rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal) is located in the City of Los Angeles, California, and its operation consists of handling passenger trains of the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company.

An Agreement dated February 14, 1939, by and between the parties named immediately above and their employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, provides for apportionment of work among employees of each of the three railroads, as well as the employment relationship, seniority status and rights of employees working within the Terminal and that, pending negotiation of an agreement covering rules and working conditions applicable to the Terminal employees, the Southern Pacific Company Clerks' working Agreement, supplemental understandings and interpretations, will apply.

The latter Agreement is in evidence, bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, and is between the Southern Pacific Company (Pacific Lines) and its employees represented by the Brother-

OPINION OF BOARD: On April 13, 1958, Claimant Pejsach Kupersztych was displaced from his position of Baggage and Mail Handler. He exercised his seniority by filing a request to displace on Relief Position No. 1136, a position requiring foreman responsibilities. On April 15, 1958, Carrier refused him the position on the grounds that it was obvious he could not qualify. Claimant, however, requested and was granted permission by Carrier to use his vacation to break in on the duties of this relief position. On April 27, 1958, he again asked to be assigned to the position, but Carrier once more denied his request for the same reason.

Claimant contends that Carrier violated the Agreement of the parties, specifically Rules 27 and 28, when it refused to allow him to displace a junior employe from Relief Position No. 1136. He maintains that Carrier was arbitrary and discriminatory in refusing him the position because he possessed seniority and sufficient fitness and ability and that Carrier's undue prejudice has been demonstrated repeatedly in its denial of his bids for positions of greater responsibility. He further argues that Carrier did not give him an opportunity to demonstrate his fitness and ability to perform the work of Relief Position No. 1136 with the full cooperation of department heads. Moreover, he states that the basis of Carrier's refusing him the position, that it was obvious he could not qualify, was not supported by proof.

In Award No. 11780 involving the same parties and the same rules, the Board found that Carrier did not act arbitrarily or unfairly in refusing Mr. Kupersztych the position of Gateman-Baggagehandler. It held that Carrier's contention that Claimant was handicapped by a language barrier, by rapid speech which was difficult to comprehend, and by repeated misunderstandings and emotional outbursts, was sufficient basis to conclude that he obviously could not qualify.

The instant case involved similar contentions as those presented in Award No. 11780. The position of Relief Assignment No. 1136 not only includes contact with the patrons of the railroad, as did the position of Gateman-Baggagehandler, but also includes foreman and supervisory duties over approximately 80 employes. The very reasons that made it obvious that Mr. Kupersztych could not qualify for Gateman-Baggagehandler are even more pronounced in denying him Relief Position No. 1136. The foreman supervisory duties and responsibilities of Relief Position No. 1136 necessitate the use of effective and calm communication. Moreover, with the greater duties and responsibilities of this position, there is increased likelihood of misunderstanding and more opportunities for excited, emotional outbursts.

Claimant has failed to show that he had sufficient fitness and ability for the position and that Carrier was arbitrary and prejudiced in its denial of his bid for the position. Since the record leads us to conclude that Carrier acted fairly and reasonably in exercising its managerial prerogative in determining the fitness and ability of Claimant for the position, we cannot hold that the Agreement was violated.

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.

AWARD

Claim denied.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 24th day of July 1964.