

Award No. 12983
Docket No. CL-12884

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**

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5076) that:

(1) Carrier violated rules of the Clerks' Agreement, effective May 1, 1953, when it refused to assign Clerk Catherine Belko to position No. 114, Steno-Clerk, Freight Traffic Department, St. Louis, Missouri, when she became the senior and only applicant for that position.

(2) Carrier be required to compensate Clerk Catherine Belko for the difference between rate of position No. 82 to which assigned, \$18.98 per day, and the rate of position No. 114, \$20.13 per day, effective December 16, 1960 to February 6, 1961, inclusive.

EMPLOYEES' STATEMENT OF FACTS: On December 12, 1960, position No. 114, Steno-Clerk, rate \$20.13 per day, was placed on bulletin in the Freight Traffic Department of the General Offices, St. Louis, Missouri, with assignment to be effective December 16, 1960.

Miss Belko who has seniority in the Traffic Department as of January 4, 1960, placed her application or bid on this position with the proper official designated by Carrier to receive same, and although Miss Belko's application or bid was the only one filed, Mr. J. T. Dodson with neither seniority nor application for the position was assigned.

Under date of January 18, 1961, Local Chairman John A. Wood addressed letter to Mr. J. A. Barrett, Vice President Traffic, calling to his attention that Rules 15 and 17 of the Clerks' Agreement were violated in the assignment of Mr. Dodson to the position of Steno-Clerk who held no rights on the Seniority Roster in the Traffic Department in preference to Miss Belko who had seniority in the Freight Traffic Office.

Under date of February 3, 1961, Mr. Barrett addressed letter to Mr. Wood in reply to Mr. Wood's letter of January 18, 1961, and we quote second paragraph:

The Third Division of the National Railroad Adjustment Board has upheld the right of management to make similar decisions and places the burden of proof upon the Petitioner to show that the Carrier's judgment in rejecting the Claimant's application in this case was not made in good faith or that it has abused the discretion reserved to it in Rule 15, paragraph (a) of the Schedule for Clerks where "fitness" is expressly set forth as a requirement in the promotion of clerks.

The claim is not supported by the rules of the Schedule for Clerks and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Position No. 114, Steno-Clerk, was bulletined on December 12, 1960 with assignment to be effective December 16, 1960, in Carrier's Freight Traffic Department.

Claimant who held seniority in the Traffic Department was the sole bidder. Another employee, with no seniority, who had not submitted a bid for the job was assigned.

The Carrier's reason for refusing to assign the Claimant was that the duties of the position required travel by the occupant with officers of the Department to various locations and for varying periods of time; that because Claimant was a female she could not be assigned to such position. No question of Claimant's fitness and ability to handle the stenographic and clerical duties of the job was raised.

From the foregoing, it is clear that this is not a case where the Carrier exercised its managerial discretion in selecting the junior of two qualified applicants as the employee better fitted to perform the duties of the position. Here the person chosen had no seniority standing and did not even bid on the job. The evidence of record leads inevitably to the conclusion that the sole reason for the rejection of Claimant's application was that she was a woman. What was said by the Board in Award 9765 is pertinent here:

"In the absence of agreement restrictions the Carrier may make the initial determination of the qualifications of employees. (Award 8214.) Under such circumstances the Division will not normally overrule the Carrier's action unless it can be shown that the action was arbitrary, unreasonable, capricious or of a discriminatory character.

* * * * *

In this dispute, when the evidence is all sifted, there remains but one valid objection to Claimant holding this position. Claimant is a woman. (Award 7817.) Therefore the claim should be allowed."

Awards 8770 and 9190 of the Division, which have been cited by the Carrier as supporting its position, are distinguishable. In Award 8770 the position involved was excepted from the seniority rules of the controlling agreement. In Award 9190, the facts clearly established the Claimant's unsuitability to perform the duties of the position to such a degree as to limit the Carrier in its operations. No such showing was made here where the Carrier's rationale for refusing to assign Claimant appears to be that Claimant's presence on trips with male officials might prove embarrassing to all concerned. Obviously the Board cannot accept this as a valid excuse for

abrogating Claimant's valuable seniority and other contractual rights under an agreement where the fitness, ability and seniority of an applicant are the sole criteria upon which the Carrier may properly exercise its managerial discretion in the assignment of its employees. (Cf. Award 24, S.B.A. No. 173 U.P. & B.R.C.).

In view of the foregoing, the Board finds the Carrier erred in failing to appoint Claimant to the position sought. This claim should be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.