

Award No. 12994

Docket No. CL-12604

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4972) that:

1. The Carrier violated Rules 3, 11 (b) and 19 (c), among others, of the January 1, 1938 Agreement in failing to call and assign furloughed Clerk-Stenographer Peggy C. Haddock to perform extra work in office of the Supervisor of Bridges and Buildings at New Smyrna Beach on August 8, 9, 10, 11 and 12, 1960, and that

2. The Carrier shall now be required to compensate claimant for a day's pay on each of the above mentioned dates because of its failure to comply with the terms of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 29, 1960, the office of the Supervisor of Bridges and Buildings was located at St. Augustine, Florida and Clerk G. A. Whitney, Jr., was the incumbent of Clerk-Stenographer position in that office. He was advised that upon completion of his tour of duty July 29, 1960 his position would be abolished. Concurrent with the abolition of this position the office of the Supervisor of Bridges and Buildings was moved to New Smyrna Beach, Florida in the same seniority district, and consolidated with the Roadmaster's office at that point. Clerk Whitney was automatically reduced to furloughed status effective July 30 as there were no junior employees over which he could exercise a displacement right. The Maintenance of Way Clerk in the Roadmaster's office at New Smyrna Beach assumed the stenographic and clerical duties of Whitney's abolished position. Furloughed Clerk-Stenographer Whitney, with a seniority date of February 27, 1956, was called to perform extra work in this office beginning August 3, 1960 to "aid in setting up a proper routine at the new location." Claimant, Peggy C. Haddock, with a seniority date of October 13, 1945, was filling a vacation vacancy in the Roadmaster's office at New Smyrna Beach on August 3, 4 and 5, the first three days of the period in which Clerk Whitney was used, she was released from that vacancy and was available and should have been used on the extra work in question during the week of August 8 to 12, inclusive.

And in Award 8839:

"... Carrier had an inherent right to specify the qualifications necessary to perform the position requirements. Claimant has nowhere in the record shown that he had the knowledge and experience to qualify for the position. He had the required seniority, but did not possess the fitness and ability to qualify..."

Clerk Whitney had been the incumbent of the temporarily reestablished position here in dispute for more than ten (10) months immediately prior to the date on which it was abolished (July 29, 1960). The incumbent preceding Mr. Whitney, having occupied the position for a number of years, elected to exercise her seniority by transferring to another department in September, 1959. Mr. Whitney was, therefore, the only clerk available who possessed a knowledge of the contents of the files and other records transferred from St. Augustine to New Smyrna Beach and, consequently, the only clerk who was in position to acquaint the clerk in the Roadmaster's office with the status of those files which were active and those which required "policing" to insure that matters pending were not lost sight of. Certainly a clerk who had not actively handled such files for an extended period of time would be in no position to explain the contents thereof to the Roadmaster's clerk, who was also totally unfamiliar with the files, yet that is the completely fallacious reasoning upon which the Employees are endeavoring to support their instant claim.

In local handling the Employees attempted to capitalize upon the fact that Clerk Whitney worked in the Roadmaster's Office on August 3, 4 and 5, on which dates the Roadmaster's clerk was not present, inferring that that fact vitiated the entire position of the Railway. To the contrary, on the three latter mentioned dates Clerk Whitney reassembled the transferred files in their proper order and placed them in condition that, commencing Monday, August 8, with the return of the Roadmaster's clerk from vacation, he could begin the task of acquainting her with the contents of the files. Anyone who has experienced the moving of an office from one city to another is fully aware of the task involved in restoring files and other records to the condition they were in prior to the move.

In resume, it is the position of the Railway, fully supported by the factual evidence developed herein, that claimant Clerk Peggy C. Haddock did not possess the requisite knowledge of the contents of the files of the Office of Supervisor of Bridges and Buildings at the time that that office was consolidated with the Office of the Roadmaster and, consequently, could not possibly have accomplished the one primary task for which the position of Clerk-Stenographer of the former Supervisor of Bridges and Buildings' Office was briefly reestablished at New Smyrna Beach during the period in dispute, namely, to impart a working knowledge of the contents of the files of that office to the incumbent of the position of Roadmaster's clerk so that the latter could efficiently handle those files along with the original files of the Roadmaster's Office. Nothing more is involved.

For the reason stated the claim is without merit and should be denied.

OPINION OF BOARD: Prior to July 29, 1960, the office of Supervisor of Bridges and Buildings was located at St. Augustine, Florida. C. A. Whitney was the incumbent of a Clerk-Stenographer position in that office. The office of Supervisor of Bridges and Buildings was consolidated with the Roadmaster's office at New Smyrna Beach, Florida, and Whitney's position as Clerk-Stenographer, which he had held from September 14, 1959, until July 29, 1960, was abolished. He was familiar with the files and records of the

Bridges and Buildings Sub-Department which it was necessary to move to New Smyrna Beach when the offices were consolidated. Carrier maintains that in order to make an orderly transfer of files and records, and to aid in setting up the new office routine at New Smyrna Beach, the position of Clerk-Stenographer formerly held by Whitney was re-instated for the period August 3 through August 12, 1960, and Whitney was recalled.

On September 5, 1960, some twenty-five days after August 12, 1960, a claim was filed in behalf of Claimant Peggy C. Haddock for compensation for August 8, 9, 10, 11 and 12, 1960, on the ground and for the reason that she was senior to Whitney, was well qualified and should have been used for the temporary work under the rules of the Agreement.

The claim was denied by the Carrier, Carrier alleging that she did not possess the necessary knowledge or qualifications required of the incumbent of this position to satisfactorily accomplish the purpose for which it was re-instated.

Whether an employe possesses sufficient fitness and ability for a position within the meaning of the rules is a matter exclusively for the Carrier to determine and such a determination once made will be sustained unless it appears that the action was capricious or arbitrary. See Award 3273—Carter; Award 10000—Webster; Award 10689—Mitchell; Award 11572—Hall; Award 12433—Seff.

We cannot substitute our judgment for that of Carrier's. Our function is limited to a review of the Carrier's decision to ascertain whether it was made in good faith upon sufficient supporting evidence. Here the Carrier determined that Claimant lacked the qualifications to satisfactorily perform the work involved. Petitioner has not proven that Claimant possessed the necessary knowledge and qualifications as to permit seniority to prevail nor has Petitioner established that the action of the Carrier was arbitrary, capricious or designed to circumvent the Agreement.

The claim is without merit.

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

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 21st day of October 1964.