

**Award Number 13352**

**Docket No. CL-13904**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Lloyd H. Bailer, Referee**

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**PARTIES TO DISPUTE:**

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

**ILLINOIS TERMINAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5307) that:

(1) The Carrier violated the Clerks' Agreement beginning September 11, 1962 when it assigned Kenneth W. Ross to permanent vacancy, covered by Bulletin #T-276, dated September 4, 1962, in the Traffic Department at St. Louis, Missouri, and declined and refused to consider the application of Norman Draper, the senior applicant, and

(2) Norman Draper shall now be assigned to the position described in Bulletin #T-276 and compensated for all monetary loss sustained from September 11, 1962 until final settlement of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On September 4, 1962, the position of Chief Division Clerk, Traffic Department, St. Louis, Missouri was advertised by Bulletin #T-276 as a permanent vacancy due to the occupant thereof, M. F. Eshing, having died. (Employees' Exhibit 1)

Bids were received for this position until 5 p.m. September 10, 1962. On September 11, 1962, Carrier posted Bulletin #T-277 awarding the position to Kenneth W. Ross. (Employees' Exhibit 2)

Mr. Draper's seniority date in the Traffic Department (Seniority District No. 1) is December 1, 1959. Mr. Ross' seniority date in the Traffic Department is July 10, 1962.

Messrs. Ross and Draper were both occupying positions in the Accounting Department (Seniority District No. 2) at the time they placed bids on the above referred to position, but had acquired seniority in District No. 1 under the rules of the agreement as of the date they first worked there.

Mr. Ross acquired his date of July 10, 1962 due to the fact that he was awarded the position of Chief Division Clerk when it was advertised as a temporary vacancy at the time Mr. Eshing took a sick leave. (See Employees' Exhibits 5 and 6)

Without waiving any of our foregoing contentions, Carrier will now discuss Mr. Draper's qualifications for the job in question. Claimant has been with the Carrier since August 1947 and had held positions of yard clerk, bill clerk, interline clerk, rate clerk, IBM Key Punch Operators and IBM Machine Operator. None of this work would hardly qualify Mr. Draper for the Chief Division Clerk position.

General Chairman Dwyer of the Organization in his letter of October 12, 1962 appealing claimant's case to Supervisor of Personnel A. E. Mester (Carrier's Exhibit "D") points out that Mr. Draper did work as a Division Clerk in Carrier's Traffic Department from December 1, 1959 to September 30, 1960 and from December 15, 1960 until March 1, 1961. While this is true, Carrier would point out that our General Freight Agent G. D. Wertz was present at conference in Mr. Mester's office on November 21, 1962. Mr. Wertz is Carrier's top expert on divisional matters and is the best qualified officer of the Carrier to make an analysis of an employee's qualifications to make a Division Clerk. It is, of course, hard to put in a letter everything that was said across the table at this conference, but carrier can only say that Mr. Wertz very emphatically pointed out to Mr. Draper that when he was learning the trade, his progression was very inadequate and wanted it understood, that while he (Mr. Wertz) had a high regard for Mr. Draper personally, he was convinced from the showing made while Mr. Draper was on the Division Clerk job, and his background of experience with the Carrier, demonstrated his lack of qualification for this position of Chief Division Clerk. Of course, Mr. Draper could have responded to his adversary as to why he felt he would have the qualifications, but instead he took a very obstinate view of the whole matter and in effect told the Carrier that you can either put me on the job or pay a timeslip. We think this attitude in itself shows that Mr. Draper does not have the demeanor to be on the Chief Division Clerk position. With such an attitude in conference between this Carrier and a foreign line carrier employee on divisional disputes, he would find it very difficult to maintain an attitude to the best interests of this Carrier. By referring to Carrier's Exhibit "G", it will be seen that Mr. Draper at the end of his 13 months of handling divisional work was only writing one letter every three days and it is necessary that claimant have the ability to write somewhere between 10 and 15 letters a day. The foregoing fairly well indicates claimant's lack of qualifications.

In conclusion, we state that Carrier complied with the only Rule in the Clerks' Agreement that is applicable (Rule 5); that there was no violation of the clerical agreement; that Carrier has not acted in an arbitrary, capricious or unreasonable manner in not assigning Mr. Draper to the position he sought.

Since Carrier had complied with the Clerks' Agreement and the handling of this claim has been in harmony with prior awards of the Board, the Carrier requests a denial award.

**OPINION OF BOARD:** On September 4, 1962 the Carrier bulletined the position of Chief Division Clerk in its Traffic Department, St. Louis, Missouri. Bids were received from employees Kenneth W. Ross and Norman Draper. The Carrier awarded the position to Ross, whereupon Draper—the senior applicant—filed a claim protesting Carrier's selection of the junior employee. Among the Agreement provisions cited in the record are the following:

#### **"RULE 5—PROMOTION AND ASSIGNMENTS**

**"Employees covered by these rules shall be in line for promotion.**

Promotion, assignments and changes in force will be based upon seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. The appointing officer shall be the judge of fitness and ability subject to appeal.

"NOTE: The word 'Sufficient' is intended to more clearly establish the right of the senior employee to the position where two or more employees have adequate fitness and ability."

**"RULE 9—TIME ALLOWED IN WHICH TO QUALIFY**

"(a) Employees accepting promotions, bulletined positions or changes in assignments, shall have, not less than thirty (30) days in which to demonstrate their fitness and ability. This will not prohibit employees being removed prior to thirty (30) days when manifestly incompetent. Employees failing to qualify will retain their seniority and may return to former position or exercise their seniority rights on any bulletined position; other employees affected have the same rights.

"(b) Employees shall be given full cooperation of supervisors, department heads and others in their efforts to qualify."

The work of the involved Chief Division Clerk position was described in the advertising bulletin of September 4, 1962 as follows:

"Duties: Assist in rate and divisional quotations, publication of rate tariffs, division and percentage sheets, handling of correspondence dealing with rates, routes, divisions and disputes with carriers and shippers; also such other matters and duties as may be assigned."

Both Ross and Claimant Draper had worked in the Accounting Department (Seniority District No. 2) for a number of years. The Traffic Department, which contains the disputed Chief Division Clerk position, is in Seniority District 1. The Claimant acquired a seniority date of December 1, 1959 in Seniority District No. 1 as a result of having been awarded, through bid, a bulletined vacancy in a Division Clerk position. He served in this position for ten months, or through September 30, 1960 when the position was abolished. The same Chief Division Clerk position involved in the present dispute was awarded Claimant Draper by bulletin dated December 15, 1960 and was filled by him from January 1, 1961 through March 31, 1961. On the latter date Claimant was displaced by M. F. Eshing, a senior employee whose position as Assistant General Freight Agent was abolished. Eshing subsequently became ill and the Chief Division Clerk position was advertised as a temporary vacancy. Both Ross and Draper bid for the temporary vacancy but the Carrier awarded it to Ross, who had done division work in the Accounting Department (Seniority District No. 2) for about ten years. It was at this time that Ross acquired a seniority date (July 10, 1962) in Seniority District No. 1. Draper filed a claim protesting the selection of Ross and the Carrier denied the claim on August 2, 1962. Before the denial was appealed, the Chief Division Clerk position was advertised as a permanent vacancy due to Eshing having died. The Carrier again selected Ross instead of Draper, and the latter's claim protesting this selection is the subject matter of the present dispute.

The record is barren of any complaint having been made by the Carrier concerning Claimant Draper's work performance during his ten months of service as a Division Clerk and his three months of service as a Chief Division

Clerk. The Organization contends the fact that Claimant performed the duties of the Division Clerk and Chief Division Clerk positions for a total of thirteen months constitutes proof of his qualifications. The Organization notes that the Carrier did not avail itself of Rule 9 to disqualify Claimant Draper from the Chief Division Clerk position at the end of thirty days. The Carrier responds that Claimant did not have sufficient fitness and ability in the considered judgment of the appointing officer, and that the selection of Ross instead of Claimant Draper was therefore in accordance with the Agreement. Carrier states that "the position of Chief Division Clerk requires an experienced Division Clerk with talent for becoming an Assistant General Freight Agent-Divisions and further advancement on thru the Carrier's managerial field;" that the concerned position carries the highest daily rate of any position covered by the clerical agreement because the work is complex and involves a high level of responsibility; and that claimant did not show aptitude for the duties of this position when he held it for three months.

We think the fact that Claimant Draper previously held the subject Chief Division Clerk position for three months without complaint from the Carrier, and without disqualifying action being taken, creates a presumption that he possessed sufficient fitness and ability for the job. We do not think the evidence presented by the Carrier overcomes this presumption. Whether Claimant possesses the necessary talent for becoming an Assistant Freight Agent-Divisions and for further advancement in the managerial field is not determinative of his entitlement to the Chief Division Clerk position. Rule 5 requires only that the senior applicant have sufficient fitness and ability in order to obtain the position involved. Claimant was the senior applicant and it is our conclusion that Carrier arbitrarily determined that his fitness and ability for the subject Chief Division Clerk position were insufficient. The claim will be sustained.

**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 violated the Agreement.

#### **AWARD**

Claim sustained.

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

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

Dated at Chicago, Illinois, this 26th day of February 1965.