

Award No. 13892
Docket No. CL-13827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5254) that:

(a) Carrier violated the Rules of the Clerks' Agreement at El Centro, California, when it failed to call and use Inez M. Garrett for a vacancy on Chief Clerk Position No. 2; and

(b) Carrier shall now be required to allow Inez M. Garrett eight hours' additional compensation each date March 26, 1961 through April 17, 1961 that employee D. B. Miller was improperly used to perform service on Position No. 2.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. At the time of this dispute Inez M. Garrett, hereinafter referred to as the Claimant, was an unassigned employee, seniority date May 15, 1945. Mr. D. B. Miller held a regular assignment at El Centro. Mr. Kenneth Nunn was the incumbent of Chief Clerk Position No. 2 at El Centro. The rest days of Position No. 2 were Saturday and Sunday.

2. Mr. Nunn was absent from Position No. 2 March 17, 1961 account illness, performed service thereon March 18 and 20, was absent due to illness March 21, 22, 23 and 24, and took his vacation in the period March 26 through April 17, 1961.

Claimant was the senior qualified and available unassigned employee for the vacation vacancy. However, instead of calling her to Position No. 2 under

and supervision tangles which were left when Carrier elected to compensate Chief Clerk Nunn for sick time compensation under provisions of Rule 66 on March 17, 21, 22, 23 and 24, 1961.

In this respect, Carrier wishes to call the Board's attention to paragraph here quoted from this Division's Award 7037:

"Whether an employe has sufficient fitness and ability to fill a position is usually a matter of judgment and the exercise of such judgment is a prerogative of the management. We have regularly held that unless it has exercised that judgment in an arbitrary, capricious or discriminatory manner, we will not substitute our judgment for that of the management."

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and is totally lacking in merit, and asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The regular incumbent of Chief Clerk Position No. 2 at Carrier's El Centro, California agency, Kenneth Nunn, was absent due to illness during the period of March 17 to April 17, 1961 inclusive — with the exceptions of Saturday, March 18 (when he performed rest day work) and Monday, March 20. For the period of March 26 through April 17, 1961, a short vacancy in this position was filled by D. B. Miller, who was the regularly assigned Assistant Chief Clerk at El Centro. K. Nunn returned to the position on April 18, 1961. The contention in the subject claim is that Mrs. Inez M. Garrett was entitled to the subject Chief Clerk vacancy pursuant to Agreement Rule 34(b), because she was the senior qualified and available unassigned employe. Carrier responds that its Agent at El Centro did not call Claimant Garrett for the Chief Clerk vacancy because he did not consider her qualified for the "intricate duties of said position," and that Assistant Chief Clerk Miller was properly used on the vacancy pursuant to Rule 34(c). Since both of the cited provisions are quoted in the parties' submission, they will not be restated here. The sole difference between the parties arises out of the Carrier's adverse determination on the Claimant's qualifications for the Chief Clerk vacancy.

Mrs. Garrett's seniority date is May 15, 1945. Between 1945 and 1956 she worked at various locations in the Imperial Valley, where she held a number of positions including Yard Clerk, Freight Clerk, Assistant Cashier, Cashier and Demurrage Clerk. From June 12, 1952 to July 1, 1952 she fulfilled the duties of Chief Clerk at Calexico pursuant to Rule 34(b), pending bulletin of that position, due to D. B. Miller having bid from Calexico to a position at another location. From 1956 until sometime in 1961 Claimant worked at El Centro — most of the time as a Revising Clerk, but also as an OS&D Clerk during the last portion of this period. During the handling of the claim on the property the Organization listed the various positions Mrs. Garrett had "successfully worked" at various Imperial Valley points, included the Chief Clerk position at Calexico, and contended this record of employment supported the claim. The Carrier's rebuttal on the property, according to the record, was that Claimant had never worked the position of Chief Clerk at El Centro, had never attempted to qualify or familiarize herself with the duties of this position, and her short service as Chief Clerk at Calexico in 1952 did not qualify her to work the El Centro Chief Clerk position, which "is required to help unload carloads of sheep and other duties with which Mrs. Garrett does not have the slightest conception." (Carrier's Exhibit B)

In its submission to the Board, however, Carrier asserts that Claimant Garrett did not have "the combined knowledge of over-all requirements of Valley switching operations, including track location in the El Centro Yard, nor was she qualified properly to deal directly with shippers in connection with the various details that invariably arise incident to their shipping requirements." (R. 24) Carrier contends that the duties of the Chief Clerk position formerly held by the Claimant at Calexico "were insignificant when compared to the intricate duties of the Chief Clerk position at El Centro and in no way whatever would the performance of duties by the Claimant on the position of Chief Clerk at Calexico qualify her for position of same title at El Centro." (R. 25) Carrier points out that El Centro is the hub station of the Imperial Valley where all billing is centralized, and at the time the subject dispute arose was also the regional accounting office for all stations in the valley, in addition to the car distribution point. Finally, Carrier notes that during the period of the claim heavy shipments of spring lambs were moving out of the valley, in addition to the perishable and sugar beet seasons being in full swing.

We think the Organization made a prima facie case on the property which Carrier was obligated to rebut in sufficient detail to enable the Petitioner to determine whether to abandon the claim or appeal it further. It was not a sufficient rebuttal for the Carrier to point out that Claimant Garrett had never worked the Chief Clerk position at El Centro and had not sought to familiarize herself with this position. If her work in other positions at El Centro and elsewhere provided her with the ability to handle the subject Chief Clerk position, after a brief orientation, she would be deemed to be sufficiently qualified. Nor was it sufficient for the Carrier to limit its description of the disputed Chief Clerk job to helping "unload sheep and other duties with which Mrs. Garrett does not have the slightest conception." So far as the evidence discloses, the Carrier waited until its submission to the Board to present reasonably full details of its defense. We think the Carrier's action was belated in this regard, and for this reason the claim will 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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1965.