

Award No. 14013
Docket No. CL-14327

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5401) that:

(1) The Carrier violated the Agreement between the Brotherhood and the Carrier effective September 1, 1952, and as supplemented, effective March 23, 1959, when on June 29, 1962, it refused to permit employe, Mr. Edward Colella, Yard Clerk, to properly exercise displacement rights on a combination Yard Clerk-Assistant Freight Crew Dispatcher's relief position held by a junior employe, Mr. Edward Sheeran at Mystic Junction Yard, Somerville, Mass.

(2) The Carrier shall now be required to compensate the aforesaid Mr. Edward Colella for one day's pay at the daily rate of \$20.8224.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Yard Clerk, Edward Colella, seniority date of February 14, 1952 had been displaced by a senior employe from Yard Clerk's position at Mystic Junction effective Friday, June 29, 1962.

His assignment at the time consisted of teletype operation and clerical duties, Monday through Friday, from 11 P. M. to 7 A. M., Saturday and Sunday rest days. Rate \$20.4384 daily.

He exercised seniority rights over a junior employe, Mr. Edward Sheeran, Yard Clerk-Assistant Freight Crew Dispatcher, seniority date May 31, 1954, effective on Friday, June 29, 1962. This is a swing job with the following assignments:

Wednesday	— 3:00 P. M.—11:00 P. M.	Teletype Operator	\$20.4384 daily
Thursday	— 3:00 P. M.—11:00 P. M.	Teletype Operator	\$20.4384 daily
Friday	— 3:30 P. M.—11:30 P. M.	Asst. Freight Crew Dispatcher	\$20.8224 daily
Saturday	— 11:00 P. M.— 7:00 A. M.	Teletype Operator	\$20.4384 daily
Sunday	— 11:00 P. M.— 7:00 A. M.	Teletype Operator	\$20.4384 daily

- (3) The Carrier's operations cannot rest on the opinion of a local chairman to the effect that seniority prevails regardless of qualifications.
- (4) The record will prove that the Respondent was not arbitrary or capricious.
- (5) The Petitioner has failed in its burden to prove that the claimant was currently qualified.

Claim is without merit, and a denial award is requested.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner's complaint is that Carrier refused to permit Claimant, after he had been displaced from a yard clerk position, to displace a junior employe in a combination yard clerk-assistant freight crew dispatcher position until Claimant had spent a day demonstrating that he was qualified to perform the work.

Rule 6 of the applicable Agreement provides that displacements "shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail." It is well settled that under a rule of this type, management possesses the right to refuse to permit displacement by an employe it considers unqualified unless its decision in that regard is arbitrary or capricious. See e.g., Awards 1147, 2692 and 12994. Since qualifications must be determined as of the time displacement rights are attempted to be exercised—in this case, June 29, 1962—the fact that Claimant had worked as an assistant freight crew dispatcher in about 1952 is not controlling (See Award 12394), particularly since it appears that the duties and responsibilities of that position had been increased in more recent years.

The evidence does not establish that Carrier acted arbitrarily in rejecting Claimant's bid on June 29, 1962, and we will deny the claim.

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 10th day of December 1965.