

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**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5363) that:

1. The Carrier violated the terms of the current Agreement between the parties when it failed and refused to accord Mr. G. W. Parrott, Chief Clerk to the Division Engineer-Roadmaster at Fort Worth, Texas, preference in the assignment to position of Secretary to the District Manager of Sales at Fort Worth over an employe of another Carrier who held no rights under the Agreement and who, in fact, was not an employe of either the St. Louis-San Francisco Railway Company or the St. Louis, San Francisco & Texas Railway Company.

2. G. W. Parrott now be allowed the difference between his rate of pay as Chief Clerk to the Division Engineer-Roadmaster and the rate of pay of the Secretary to the District Manager of Sales from January 15, 1962, until corrected for each date the violation continues.

EMPLOYEES' STATEMENT OF FACTS: Due to the resignation of the Secretary to the District Manager of Sales at Fort Worth, Texas, that position became vacant on or about November 10, 1961. Under date of December 6, 1961, Mr. Parrott made application for the position to Mr. J. G. Skaggs, District Manager of Sales, and on December 19, Division Chairman Perkins protested the assignment of a Mr. Pickett, an outsider, who held no seniority or other rights under the Clerks' Agreement and who, in fact, held no service connection with the Carrier, to Mr. R. C. Grayson, General Manager-Sales at St. Louis, Missouri. See Employees' Exhibit 1(a) and Mr. Grayson's reply of January 23, attached as Employees' Exhibit 1(b).

The application of Mr. D. A. Pickett was not approved after physical examination, also on December 19, 1961. On December 27, 1961, J. D. Rogers, an employe of the Fort Worth & Denver Railway Company, who also held no previous employment relationship with the Carrier, accepted the appointment and was placed on the position of Secretary to the District Manager of Sales on Monday, January 15, 1962, the Carrier completely ignoring the

As hereinbefore stated, Exception (b) and (c) positions listed in Rule 1 are exempt from the Promotion, Assignment and Displacement Rules of the Agreement. The language of the Agreement expressly provides that vacancies in these positions may be made without regard to the Promotion Rule and that the Management shall be the sole judge of qualifications therefor. Not only are the Exception (a) positions listed in Rule 1 exempt from the Promotion, Assignment and Displacement Rules of the Agreement, but these positions are exempt from all rules in the Agreement, save Rules 1 (Scope), 25 (Retaining Seniority), 66 (Transportation), and 78 (Closure), and the investigation rules of the Agreement, in the event of dismissal from service. When all of the rules of the Agreement are considered, the rights of Management to be the sole judge of qualifications of employees filling Exception (a), Rule 1, positions cannot be less than its rights respecting the filling of Exception (b) and (c), Rule 1, positions. The relative rank and importance of Exception (a), (b) and (c) positions are in the order of their alphabetical listing in the Scope Rule, and this Division cannot sustain the position advocated by the Organization without destroying the true intent and meaning of the rules.

The Carrier affirmatively states and the record establishes that the Claimant's application received the preference to which it was entitled under the Agreement. The Organization contends otherwise, and unless and until it meets the burden of proof resting upon it, this claim must fail.

The claim of the Organization is without merit and Agreement support, and should be denied. The Board is requested to find in favor of the Carrier and deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The point at issue is whether or not Carrier violated Rule 9 of the Clerks' Agreement by employing an outsider to fill a vacancy in the position of Secretary to the District Manager of Sales at Fort Worth, Texas. Claimant, an employee covered by that Agreement, applied for the position, but Carrier first named D. A. Pickett, and then when Pickett did not pass the physical requirements, designated V. D. Rogers to fill the vacancy. Unlike Claimant, neither Pickett nor Rogers was covered by the Agreement, or employed on the St. Louis-San Francisco & Texas Railway at the time they applied for the job.

While the position in question is excepted for many purposes, Rule 9 expressly prescribes that in filling it, "preference shall be given to employees coming under provisions of this Agreement." This provision is couched in mandatory terms, and must be complied with and enforced.

Carrier contends that it gave Claimant all due preference, but assigned Rogers because of his far greater youth and formal education, as well as his training in the Traffic Department of another railway. It points out that Claimant's clerical experience has been in the Transportation Department, and that the vacancy under consideration was in the Traffic Department. The factors cited by Carrier are not arbitrary or unreasonable, and we certainly can sympathize with its problems in furnishing executives with suitable secretarial assistance. Ordinarily, Carrier would enjoy unlimited latitude in filling such positions.

The problem here, however, is that Carrier has restricted the broad latitude it normally would have by expressly committing itself to give preference to employes covered by the Clerks' Agreement. Such preference does not mean that Claimant merely will be given due consideration. Rule 9 contemplates that, as against applicants outside the Agreement's aegis, Claimant will be favored and given priority (see Award 10180). We are not at liberty to distort the plain meaning of that provision in order to arrive at a result that may be more compatible with our own views of secretarial employment. Carrier, of course, has the right to determine qualifications in filling positions, but this is not a situation of that type. During the entire period, well over a year, that the claim was being discussed on the property, Carrier at no time so far as the record indicates, challenged Claimant's qualifications, although the Organization's representatives squarely presented the issue by repeatedly asserting that there was no question but that he possesses the necessary fitness and ability. Claimant is an employe with over forty years' service with the Carrier and with long clerical experience. For some time, he has served as Chief Clerk to the Division Engineer-Roadmaster at Fort Worth.

What is particularly disturbing about Carrier's position is that it has produced no evidence that the disputed vacancy demands youth, superior formal education and Traffic Department background. Such proof is an essential element of Carrier's case for, otherwise, Rule 9 would be meaningless, and of no practical effect.

In its Submission before this Board, Carrier for the first time stated that at the conference held on the property between Claimant, his representatives and a Carrier official well after Rogers had been assigned and this claim initiated, Claimant replied in the negative when asked whether he would be willing to transfer elsewhere if he obtained the assignment. Carrier maintains that this development is of importance, since the vacancy should be filled by employes who are prepared to grow in the Company, and go on to greater responsibilities. Viewed in the context of when and under what circumstances it occurred, that incident does not effect our conclusions, and was not taken into consideration at the time it filled the vacancy. There is no evidence that Carrier considered Claimant of unsatisfactory caliber for promotion (cf. Award 5264) and discrimination based on age and education is unacceptable in the absence of proof that such qualities are needed on the job.

Under the specific facts of the present case, particularly since it has not been shown that youth, superior formal education and Traffic Department experience are necessary in the position of Secretary to the District Manager of Sales at Fort Worth, the claim must be sustained. We are not holding that the factors mentioned by Carrier are unreasonable or arbitrary. The basis of this award is that Carrier has not fulfilled the obligations imposed upon it by Rule 9.

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 violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of January 1966.