

Award No. 14736
Docket No. CL-14714

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**LOS ANGELES UNION PASSENGER TERMINAL
(Southern Pacific Company (Pacific Lines);
The Atchison, Topeka, and Santa Fe Railway Company;
and the Union Pacific Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5477) that:

(a) The Los Angeles Union Passenger Terminal violated the current Clerks' Agreement when it failed to assign Mr. John L. Kelly, the senior applicant, to Utility Clerk Position No. 476; and,

(b) The Los Angeles Union Passenger Terminal shall now be required to allow Mr. John L. Kelly the difference in rate of pay between Baggage and Mail Handler and Utility Clerk and eight (8) hours' compensation at time and one-half rate of Baggage and Mail Handler, starting July 5, 1961, and continuing each date thereafter until he is assigned to Utility Clerk Position No. 476.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date January 1, 1959 (hereinafter referred to as the Agreement) between the Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal) 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.

The Terminal is located in the city of Los Angeles, California, and its operation consists of handling passenger trains for the Southern Pacific Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company.

qualified for the position of Utility Clerk involved in that he had never worked a clerical position since reporting to the Terminal, October 16, 1960, and was not familiar with any of the clerical duties required of a utility clerk, particularly the baggage checking and delivery which is handled in heavy volume during the summer travel.

By letter dated December 20, 1961 (Terminal's Exhibit "C"), Petitioner's General Chairman appealed the claim to Mr. K. K. Schomp, the officer designated by the Terminal to hear such appeals, embodying the Division Chairman's letter of August 24, 1961 (Terminal's Exhibit "A"), as part of the appeal.

By letter dated October 9, 1962 (Terminal's Exhibit "D"), Mr. K. K. Schomp denied the claim, pointing out that the claimant was not qualified for the position involved and accordingly was not eligible for the vacancy and that the claim was not supported by Rules 26, 27, 29(g) or any other provision of the current agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the question as to whether or not the Los Angeles Union Passenger terminal, hereinafter referred to as Terminal, violated Rule 27 of the Agreement when it refused to permit Claimant to occupy the position of Utility Clerk No. 476 on the grounds that he was not sufficiently fit and able to perform the work of said position.

The position in question involved handling of Baggage and being familiar with Baggage tariff and restorations, computation of excess baggage charges; computation of excess storage charges; selling baggage insurance and other related duties.

The Organization argues that the burden is on the Terminal to assign the applicant with seniority to a position unless it is obvious that he cannot qualify. This contention was rejected by this Board in Award 14288, involved the same parties herein, when we held:

"We reject the contention of Claimant that Rule 27 must be construed to place an immediate burden on the Terminal to assign a senior employe unless it is obvious at the outset that he cannot qualify. To impose such a restoration would virtually nullify Terminal's right to determine fitness and ability in any instance."

The Organization further contends that the Claimant had the fitness and ability to learn the duties of said position, and therefore he should have been assigned to the position in question. Nowhere in the agreement is it required that a man qualify by training on the job.

Further, this Board has held that if the Carrier determines that the applicant lacks sufficient fitness and ability, the burden is on said applicant to establish that he possessed reasonable sufficient fitness and ability to occupy the position. Awards 3273 and 1147.

The record shows that the Petitioner failed to establish that he was fit and able to occupy the position. In fact the record shows that when Carrier

suggested to Claimant that he gain experience on his own time, he flatly refused even though Claimant was totally unfamiliar with the duties of the position in question. Therefore, it is the opinion of this Board that the Agreement was not violated and the claim will be denied.

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 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 3rd day of August 1966.

LABOR MEMBER'S DISSENT TO AWARD 14736, DOCKET CL-14714

My dissent to Award 14288, Docket CL-15273, is adopted as my dissent to this Award 14736 in Docket CL-14714. These erroneous decisions are simply more indicative of one's own personal predilections rather than an interpretation of the **rules negotiated by the parties**.

The problem presented was clearly solved by the negotiated rules and, absent an arbitrary ruling that perhaps the negotiated rules were too restrictive, the Claimant herein, as well as in Award 14288, had every right to rely on the plain language of the Agreement negotiated in his behalf.

The Referees, on the other hand, had no right to interpret the Agreement as though the "Note" to Rule 27 did not exist.

Award 14736, Docket CL-14714, is in error for the above reasons as well as those set forth in my dissent to Award 14288.

/s/ D. E. Watkins

D. E. Watkins,
Labor Member 8-9-66

**CARRIER MEMBER'S ANSWER TO LABOR MEMBER'S DISSENT TO
AWARD 14736, DOCKET CL-14714**

In Award 14736 the Referee has correctly applied the applicable rules and has properly refused to modify their plain terms under the guise of interpretation. See Carrier Member's Answer to Labor Member's Dissent to Award 14288, Docket CL-15273, for a discussion of the absurd position taken by the Employees in these cases.

/s/ G. L. Naylor

/s/ R. A. DeRossett

/s/ H. K. Hagerman

/s/ C. H. Manoogian

/s/ W. M. Roberts