

Award No. 15387
Docket No. CL-15752

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5781) that:

(a) Carrier violated the Agreement when it failed and refused to assign clerical employee, Mr. Charles R. Bowen to the Computer Equipment Operator position which was bulletined on September 25, 1963, in the Operating Department, Office of General Computer Engineer, Washington, D. C., and in lieu thereof assigned the position to an individual who was not an employee of the Carrier.

(b) Mr. Charles R. Bowen shall now be compensated the differences in his rate of pay and that earned by the Computer Equipment Operator, beginning October 25, 1963, and continuing until he is assigned one of the Computer Equipment Operator positions.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case holds position and the Southern Railway Company.

On September 25, 1963, Mr. Charles R. Bowen had been an employee of the Southern Railway Company for a period of over twelve (12) years. During this period of time he had worked over one (1) year in the Payroll Department, over nine (9) years as a Key Punch Operator and as a Shipping Clerk in the Stationary Department.

For the period August 1, 1962, through September 30, 1963, there were a total of Twenty One (21) Vacancy Bulletins issued by the Southern Railway System, Operating Department, Office of General Computer Engineer, Washington, D. C. All of the Vacancy Bulletins were issued seeking applications from "employees holding clerical seniority in the Operating Department Computer Center, Atlanta, Georgia." The first of these vacancy bulletins (see Employees' Exhibit N) carried the following opening paragraph:

OPINION OF BOARD: Claimant, on September 25, 1963, in response to Vacancy Bulletin No. 21, filed application for the position of Computer Equipment Operator. At that time Claimant was employed as clerk in the Stationery Department and had more than 12 years of employment by Carrier. Carrier found Claimant not qualified for the bulletined position. It assigned the position to an individual with no Operating Department seniority who was a former employe of Central of Georgia.

Clerks contend that Carrier's failure and refusal to assign Claimant to the position violated the Rules Agreement and a Memorandum Agreement of November 9, 1956, with respect to the rights of clerical employes to positions coming into being by "Establishment of Operating Department Computer Center."

The rule to be interpreted is:

"RULE 15.

**PROMOTION, VACANCIES OR NEW POSITIONS
NOT FILLED BY SENIORITY**

(Revised, effective October 1, 1938)

"Promotions, vacancies or new positions (either excepted or schedule) which are not filled by seniority shall be filled as follows:

Qualifications, merit and capacity being equal, preference shall be given employes in the service in order of their service age, the appointing officer to be the judge, subject to appeal to the highest officer designated by the Carrier to whom appeals may be made, whose decision shall be final."

It vests Carrier with the absolute right to determine qualifications with finality. We, therefore, are compelled to deny the Claim.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1967.

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