

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, 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-5905) that:

(a) The Southern Pacific Company violated rules of the current Clerks' Agreement when on March 1, 1961, it denied Francis Willgat, Laborer, the right to displace a junior employe on position of Wheel Roller, and;

(b) The Southern Pacific Company shall now be required to compensate Francis Willgat eight (8) hours compensation at rate of Wheel Roller from March 2, 1961, and continuing for each and every work day thereafter he is withheld from the assignment on which he wished to exercise his seniority rights.

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

On March 1, 1961, employe Francis Willgat (hereinafter referred to as Claimant), a laborer at Store No. 3, Sacramento, California, addressed application in writing to Mr. D. A. Mount, General Storekeeper, indicating that he had lost his position through no fault of his own and wished to apply for position of Wheel Roller, held by R. C. Del Real, effective March 2, 1961.

Within ten minutes after delivery of displacement application to General Foreman J. J. Doherty, copy was returned to Claimant with notation "Application Denied Account Not Qualified," typed across the face of the application.

Because of an outstandingly poor safety record, which will be reviewed in detail later in this submission, the General Foreman, who was fully aware of Claimant's past performance and had declined Claimant's request to displace on the same position in December of 1960, on the basis he was for that reason not qualified, likewise declined to allow him to do so in this instance. Attached as Carrier's Exhibit A are copies of displacement notices filed by Claimant for Wheel Roller position in December of 1960, and that subject of this claim dated March 1, 1961.

4. By letter dated April 21, 1961 (Carrier's Exhibit B), Petitioner's Division Chairman submitted the claim on behalf of Claimant to Carrier's General Storekeeper for eight hours' compensation at the applicable rate of pay of Wheel Roller for March 2, 1961, "... and for each and every subsequent work day thereafter until this employe is placed on position of 'Wheel Roller' now occupied by junior employe . . .," based on the premise it was not obvious that Claimant could not qualify for that assignment. By letter dated May 29, 1961 (Carrier's Exhibit C), Carrier's General Storekeeper denied the claim, to which by letter dated June 8, 1961 (Carrier's Exhibit D), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated July 24, 1961 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Manager of Stores and by letter dated September 7, 1961 (Carrier's Exhibit F), the latter denied the claim.

By letter dated November 4, 1961 (Carrier's Exhibit G), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated June 16, 1965 (Carrier's Exhibit H), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The question here is whether or not, under Rule 28 of the parties' agreement, same providing for displacement by seniority, unless applicant is not fit or does not qualify, Carrier acted arbitrarily and capriciously when it denied Claimant's application to displace a junior employe on the grounds that Claimant was not qualified.

It is the unrefuted evidence that Carrier's general foreman denied the application within 10 minutes from the time he received same. Further, it is established that the work, a Wheel Roller position, was hazardous requiring physical strength and a degree of mental dexterity, that Claimant had been discharged from the Military Service because of "physical disability," and that Claimant had a record of minor injuries over the years.

While Carrier's decision was hasty, it was not arbitrary and capricious. See, Awards 10403 (Mitchell), 11780 (Hall), 14113 (Hall), 14765 (Devine), 15164 (Dorsey), 15494 (Zumas) and 15626 (McGovern). Carrier was acting according to its managerial rights and obligations. Here, Carrier's decision was for the best interest of all concerned, including Claimant, other employes and itself.

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 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 20th day of September 1967.