



Award No. 15929
Docket No. CL-16222

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5925) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when in the Office of Director, Revenue Accounting, it assigned position of Clerk-Typist in the Station Accounting Bureau to Mr. E. J. Pohl instead of Mr. P. A. Bryan, neither Mr. Pohl nor Mr. Bryan had a seniority date in the Station Accounting Bureau, but Mr. P. A. Bryan had the most immediate office service age.

(b) Mr. Bryan shall be compensated at the rate of \$20.42 a day, five (5) days per week, for the period beginning on September 1, 1964, and continuing through October 16, 1964, for a total of \$694.28.

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 held position and the Southern Railway Company.

Mr. P. A. Bryan was a clerical employee in the Office of Director, Revenue Accounting, Station Accounting Bureau, Southern Railway Company. Mr. Bryan had been working in the Station Accounting Bureau for a period of over 90 days on a temporary basis, prior to the Carrier's bulletin of August 25, 1964, advertising position "Clerk-Typist" in the Station Accounting Bureau under Vacancy Bulletin No. 15.

Mr. E. J. Pohl was a clerical employee in the Office of Director, Revenue Accounting, Station Accounting Bureau, Southern Railway Company, Mr. Pohl had been working in the Station Accounting Bureau for a period of about 30 days on a temporary basis, prior to the Carrier's bulletin of August 25, 1964, advertising position "Clerk-Typist" in the Station Accounting Bureau under Vacancy Bulletin No. 15.

Assignment Bulletin No. 15-A, dated August 28, 1964, awarded position of Clerk-Typist, effective September 1, 1964, to Mr. E. J. Pohl.

to fill the position, then consideration is extended to other offices or seniority districts.

This does not circumscribe or place any additional limitation upon the rule and note as written in the agreement; its purpose is for clarification only.

NOTE No. 4: (Effective December 1, 1951.) The Office of Auditor of Freight Accounts, including the Waybill Assorting Division, Machine Accounting Bureau and Station Accounting Bureau, shall be deemed to be one office or 'immediate office,' as used in the third from last paragraph in Note No. 3 above.

In event Station Accounting Bureau is removed from jurisdiction of Auditor of Freight Accounts, it shall, for purposes of this note, be considered a separate seniority district."

"RULE 16.

FILLING VACANCIES UNDER SENIORITY RULES

(a) (Revised, effective October 1, 1938.) Except as otherwise provided in this agreement, Rules 7, 8, 9, 13, 14, 15 and 17 in particular, vacancies covered by this agreement will be filled in accordance with principles defined in Rule 15 (exclusive of the notes) in the following manner, except that merit, capacity and qualifications being sufficient, seniority shall govern:

The officer in charge where vacancy occurs will, within two days, bulletin such position to all employes of the group or class on the seniority district in which vacancy exists. Bulletin to show location, title, rate of pay, and preponderating duties of position, number of hours assigned per day, and number of days assigned per week, subject to reduction in weeks in which holidays occur by the number of such holidays. Employes desiring such position must, within five calendar days (except in General Offices at Washington, Cincinnati, Atlanta and Chattanooga, where the period shall be two working days) after bulletin is posted, make written application to the officer issuing the bulletin. The bulletin shall expire at twelve o'clock midnight on the fifth or second day, as the case may be. From these applications the senior qualified employe shall be assigned to the position within fifteen (15) days, and bulletin will be posted giving name of successful applicant. If requested, copy of all bulletins will be furnished Local Chairman.

NOTE No. 1: The word 'sufficient' as used above is intended to establish the right of the senior qualified employes to be assigned to new positions or vacancies covered by Section (a) of this Rule 16 over junior qualified employes."

OPINION OF BOARD: The instant dispute arose because Claimant was not assigned to a position of Clerk-Typist in the Office of Director, Revenue Accounting, Station Accounting Bureau for which he and another employe had

applied under Rule 15 of the Agreement between the parties. The record discloses that Claimant had filled a clerical position in that office for approximately 90 days on a temporary basis prior to applying for the position under Rule 15 of the applicable agreement, whereas the successful applicant had only served in said office on a temporary basis for about 30 days at the time Carrier awarded the position to him.

The parties agree that the applicable provision of the agreement is Rule 15, which reads as follows:

"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 employees 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."

Petitioner does not challenge the right of the appointing officer to judge the qualifications, merit and capacity of the respective applicants under Rule 15 of the agreement, but contends that the appointing officer exercised his right in an arbitrary and capricious manner not in keeping with the intent of said Agreement. Petitioner asserts that Notes 1, 2 and 3 following Rule 15 were not considered by Carrier, and that Claimant would have been awarded the position had such notes been properly applied. Furthermore, Petitioner contends that the decision was inconsistent with a prior interpretation of Rule 15 and the attached notes in which Carrier apparently concluded that service age in the immediate office where a vacancy exists would have preference over all service age with the Company in other departments.

Carrier's defense is that the appointing officer judged the qualifications, merit and capacity of the successful applicant to be greater than those of Claimant, and that it was not necessary to give preference to either on the basis of service age.

The record reflects that the successful applicant had entered the service of the Carrier on September 2, 1926, whereas the Claimant entered service on May 18, 1953, some twenty-six years later. Although Claimant may have trained the more senior employee to perform the particular duties of the Clerk-Typist position, both had served on the position on a temporary basis at the time of Carrier's determination. There is no probative evidence that Claimant was as well qualified or better qualified than the successful applicant at the time of Carrier's selection, which clearly is a matter for determination by Carrier under the unequivocal language found in Article 15 of the Agreement. Award 15387.

Carrier has cited previous awards involving the same issue, parties and rule, and Petitioner has submitted nothing of probative value to support its assertion that the action taken by Carrier was biased, arbitrary or capricious. The notes attached to Rule 15 have no significance here as Carrier's decision was based upon comparative qualifications, merit and capacity.

The recent decisions relied on by Carrier are not palpably wrong and we find them controlling in the instant case. (Awards 15387 and 15784.) Accordingly, the Claim must be denied.

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 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1967.