

Award No. 16426
Docket No. CL-16466

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6095) that:

(1) Carrier violated the current Clerks' Agreement when it refused to honor the bid of B. J. Stewart, senior Clerk, on an advertised vacancy and assigned a junior bidder.

(2) Miss B. J. Stewart shall be compensated for the difference between the daily rate of the Head Revising Clerk position \$23.78 per day and that of Revising Clerk position No. 1 \$22.85 per day, from August 7, 1964 until condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: The seniority date of Miss B. J. Stewart, in the Auditor of Revenues Department of the Kansas City Southern Railway Company, Kansas City, Missouri, in Group 1, is August 8, 1944. The seniority date of Mr. R. G. Kennedy, the junior bidder who was assigned to the position, in the same Department, group and location, is August 10, 1959.

On August 4, 1964, Mr. R. H. Booth, Auditor of Revenues, of the KCS, at Kansas City, issued his Bulletin No. 18 for position of Head Revising Clerk (E. Exhibit No. 1). There were three (3) bidders on the vacancy, Miss Stewart, Mr. Kennedy and Mr. G. J. Bakker; Mr. Kennedy was assigned to the position on August 7, 1964, by Bulletin A 18, he being junior to Miss Stewart in seniority.

Claim was filed by the Local Committee of the Brotherhood, under date of September 15, 1964 (E. E. No. 2), and declined by Mr. Booth under date of October 14, 1964, file PR-456 (E. E. No. 3). The claim was appealed to Vice President and Comptroller Pregge on December 1, 1964 and declined by him on December 3, 1964 (E. E. No. 4). The claim was then appealed to Mr. D. E. Farrar, the highest Officer designated by the Carrier to handle such

The Carrier's action was taken only after full consideration of all the facts involved and Carrier was not arbitrary, capricious or unreasonable when it denied Miss Stewart the position.

While a precedent should not be blindly followed, we are in agreement with the findings of Award 6028 cited by you in support of this claim, because we consider that such findings fully support this Carrier's rejection of Miss Stewart's bid.

Claim is denied.

Yours very truly,

/s/ D. E. Farrar
Asst. to President"

Conference was held on the claim and several more letters were exchanged by the parties. On August 15, 1963 Carrier wrote the Employees extending the time limit another six months from August 15, 1963 and subsequent thereto the claim was abandoned by the Employees.

The incumbent of the Head Revising Clerk position having been promoted, the vacancy was advertised again on August 4, 1964. Three bids were received, including application from Miss Stewart. After careful consideration, Miss Stewart was again advised she did not possess sufficient fitness and ability to properly perform the duties of the position and another applicant was assigned. Similar claim was filed based on the same contentions advanced in the 1961 claim. In view of the fact claimant previously had been found to not possess sufficient fitness and ability to handle the position and had done nothing since 1961 to improve her ability to handle the duties of Head Revising Clerk, claim was denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, whose seniority date is August 8, 1944, through a series of promotions occurring during the course of approximately fifteen years arose to the position of Revising Clerk Number 1. In September, 1959, she filled a thirty day, temporary vacancy in the position of Head Revising Clerk, a position which, according to both subsequent bulletins, required that the occupant be "Qualified to supervise and direct the processing through the Revising Bureau, interpret freight tariffs and such other duties as may be assigned." Significantly, the evidence concerning Claimant's performance of the duties of this position during her temporary occupancy of same is conflicting.

Subsequently, under date of February 10, 1961, Bulletin 1 was issued advertising the position resulting in Claimant, senior applicant, applying for same. Subsequently, on February 20, 1961, she was advised that because she did not possess the requisite fitness and ability for the position it had been assigned to a junior applicant. A claim made on her behalf for assignment to the position was denied by the highest official designated to handle such matters and thereafter abandoned.

Under date of August 4, 1964, Bulletin Number 18 was issued again advertising the position of Head Revising Clerk. Subsequently, Claimant was again refused permission to exercise her seniority right on this position for the same reasons that had theretofore been outlined to her by Carrier, which occurrence gave rise to the instant claim.

This is a so-called fitness and ability case; one wherein Claimant challenges Carrier's judgment that an employee does not possess sufficient fitness and ability for the position sought, and therefore requires a weighing of the evidence within the framework of reference of Rule 7(a) which provided:

"(a) Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being 'sufficient,' seniority shall prevail. The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid on a new position of vacancy where two or more employees have adequate fitness and ability."

In Award 11941 (Dorsey) and Award 14992 (Hall), involving the same parties and same issues, it has been established on this property that:

". . . under the above rule the determination as to 'fitness and ability' to fill the . . . position was within the judgment of Carrier."

"Only if Petitioner proved by a preponderance of the evidence that Carrier exercised its judgment in an unreasonable, arbitrary, capricious or discriminatory manner could we consider whether the Agreement was violated. The burden of proof was Petitioner's. It did not meet it. We will dismiss the claim."

Thus, in accordance with these precedents, the burden of proof was with the Claimant which she did not meet, either in terms of quality or quantum. For this reason, the claim is 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.