

Award No. 16841

Docket No. CL-17041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6233) that:

1. Carrier violated the Clerks' Agreement when, on January 17, 1966, it refused and continued to refuse to assign Miss Bernice Langenohl to position of Personal Clerk, Job No. 012, in the Disbursements Accounting Department of the General Accounting Office, St. Louis, Missouri, on which she placed her bid, but it was assigned to a junior employe on January 18, 1966, in violation of Rules 3, 4, 6, 8, 45 and related rules of the Clerks' Agreement.

2. Carrier shall be required to compensate Miss Langenohl in the amount of 89 cents per day, representing the difference between \$25.87, the rate of Personal Clerk Job No. 012, which she was denied and \$24.98, the rate of her position as Senior Bill Clerk, Job No. 031, for January 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, February 1, 2, 3, 4, 7, 8, 9, 10 and 11, 1966, 19 dates, amount \$16.91 with claims continuing on the same basis for each day, Monday through Friday subsequent to February 11, 1966, until she is assigned to position of Personal Clerk, Job No. 012.

3. Carrier shall be required to assign Miss Bernice Langenohl to position of Personal Clerk Job No. 012.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company maintains record storage center on two basement levels beneath its General Office Building at 13th and Olive Streets, St. Louis, Missouri.

This building was owned by the Missouri Pacific Railroad Company until on or about June 1, 1961, when, the Employes understood, it was sold to the Fortune Holding Corporation, and then the Missouri Pacific Railroad leased it back for a period of thirty years, with various five year renewal options.

On or about August 1, 1962, the Carrier established the record storage center in the basement areas of the Missouri Pacific General Office Building. Prior to that time the Carrier maintained its record storage warehouse at

Dear Sir:

Reference to your letter of April 8, 1966, File 7115, dealing with claim of Senior Bill Clerk Bernice Langenohl, for 89 cents per day for January 18, 1966 and each subsequent work day thereafter until assigned to Job No. 012, covered by BA Bulletin 8 dated January 11, 1966.

You have been previously advised by Mr. G. K. Weigel, Vice President-Controller and Mr. E. R. Lauman, Senior Assistant Controller that claimant was denied this position because it carried certain duties that would not be suitable for women to perform. Various files and records in connection with this position are kept in boxes and when filled to capacity, weigh 35 pounds or more and are stored up to a height of 20 feet in the basement record room. The work of handling 35 pound boxes of records, climbing 20 ft. ladders, etc., is not adapted to female service, nor is the duty of traveling to other cities or points on the railroad to secure information as may be necessary in the performance of the duties assigned to this position.

The refusal of the Carrier to assign claimant to the position in question is based entirely upon the nature of the work involved in the performance of the duties thereon. A part of the duties are in location where women have not been employed because they will by their sex be unsuited to perform all of the duties assigned to the position.

It is the Carrier's position that claimant was not qualified to properly perform all the duties attached to the position of personal clerk. The vacancy was filled pursuant to the provisions of Rules 4 and 32 of the Clerks' Agreement.

In view of the foregoing claim is without merit or rule support and is respectfully declined.

Yours very truly,

/s/ B. W. Smith"

OPINION OF BOARD: Miss Bernice Langenohl, Claimant, held seniority in Carrier's General Accounting Office in St. Louis, Missouri, with a seniority date of May 24, 1928.

On January 11, 1966, Carrier's Controller's Office issued bulletin number DA-8 advertising a vacancy on Position No. 012, Personal Clerk, in the disbursements section of the General Accounting Office in St. Louis. The duties of this position were described in the bulletin as follows:

"To assist in closing inventories as required. Assist in development of annual report data. Maintain current record of payments made by Agents, etc. for use in annual preparation of forms 1099. To do special and general work as assigned.

Develop special data for outside offices, etc., as required. Handle outside record room duties and secure information from within and

outside of the office as may be necessary. To have ability to originate and handle correspondence as necessary. Perform such other similar or lower rated duties as may be assigned."

Claimant placed a bid for the position.

On January 17 Claimant was called into the office of Manager of Disbursements where he and his assistant talked to her about the duties of the position and informed her that the outside record room duties of the position were not suited to a woman employee.

On January 18 Carrier assigned the position to Mr. J. T. Haney, who had a seniority date of March 5, 1945.

On January 20, 1966, Claimant wrote to the Senior Assistant Controller and requested reasons why she was denied assignment to the position. He replied under date of January 26:

"Reference is made to your letter of January 20, 1966, requesting specific and precise reasons as to why you were denied assignment to Personal Clerk Job No. 012 advertised by Bulletin DA-8, dated January 11, 1966, which was assigned to Joe T. Haney, a junior employee.

In a meeting in Mr. Stallings' office on January 17, 1966, in connection with your bid on this position, your attention was directed to the duties of 'handle outside record room duties and secure information from within and outside of the office as may be necessary.' You were then advised that these duties are unsuited for assignment to women and that your assignment to this position would severely limit the Company in its operations.

Rule 32 (a) provides that the working conditions for women employees must be healthful and fitted to their needs. Obviously, the conditions of the basement Record area do not adequately fit the needs of women employees. Records in this Record Room are stored up to 20 feet high, which, of course, requires use of ladders to gain access to them. They are stored in boxes weighing as much as 35 pounds, and since the incumbent of position No. 012 will be required to search the records, we find that it would be very undesirable to assign women to this position. Moreover, the aforesaid duty contemplates that the incumbent of this position will be required to do some out of town traveling. (Emphasis ours.)

In view of the foregoing, your bid on position No. 012 was denied."

Under date of February 11, 1966 Clerks filed Claim alleging that Carrier, by assignment of a junior employee to the position, violated Rule 4 (a) which reads:

"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.

NOTE 1: The word 'Sufficient' is intended to more clearly establish the prior rights of the senior of two or more

employees of the same seniority district having adequate fitness and ability for the position or vacancy sought in the exercise of seniority."

Carrier, on May 17, 1966, denied the Claim giving as reasons for disallowance:

"You have been previously advised by Mr. G. K. Weigel, Vice President-Controller and Mr. E. R. Lauman, Senior Assistant Controller that claimant was denied this position because it carried certain duties that would not be suitable for women to perform. Various files and records in connection with this position are kept in boxes and when filled to capacity, weigh 35 pounds or more and are stored up to a height of 20 feet in the basement record room. The work of handling 35 pound boxes of records, climbing 20 ft. ladders, etc., is not adapted to female service, nor is the duty of traveling to other cities or points on the railroad to secure information as may be necessary in the performance of the duties assigned to this position. (Emphasis ours.)

The refusal of the Carrier to assign claimant to the position in question is based entirely upon the nature of the work involved in the performance of the duties thereon. A part of the duties are in locations where women have not been employed because they will by their sex be unsuited to perform all of the duties assigned to the position.

It is the Carrier's position that claimant was not qualified to properly perform all the duties attached to the position of personal clerk. The vacancy was filled pursuant to the provisions of Rules 4 and 32 of the Clerks' Agreement.

In view of the foregoing claim is without merit or rule support and is respectfully declined."

It is significant that Clerks admit that the duties of the position include the handling of file boxes, weighing 35 pounds or more, which are stored to a height of 20 feet.

A like issue as to fitness and ability was adjudicated by this Board in Award No. 14055 wherein we held:

"Claimant, a female, was employed as a laborer. She sought, unsuccessfully, to displace a male laborer whose seniority was junior to hers. Petitioners avers: (1) Claimant had a contractual right to displace the junior employee; and, (2) she was denied exercise of the right because of Carrier's intent to rid itself of female laborers.

Carrier says it did not permit Claimant to effect the displacement because she lacked sufficient fitness and ability to perform the tasks of the position. It states that in making the determination, Claimant's age, sex, and physical condition, along with the nature of the work, were among the factors considered. To this Petitioner responds that Claimant had been employed as a laborer for a number of years; ergo, she had the fitness and ability to perform the work of any laborer position.

The issue, as framed on the property, is whether Claimant possessed the fitness and ability to perform the work of the position on which she attempted to displace the incumbent.

In Award No. 12994 we held:

'Whether an employe possesses sufficient fitness and ability for a position within the meaning of rules is a matter exclusively for the Carrier to determine and such a determination once made will be sustained unless it appears that the action was capricious or arbitrary. See Award 3273 — Carter; Award 10000 — Webster; Award 10689 — Mitchell; Award 11572 — Hall; Award 12433 — Seff.

We cannot substitute our judgment for that of Carrier's. Our function is limited to a review of the Carrier's decision to ascertain whether it was made in good faith upon sufficient supporting evidence. Here the Carrier determined the Claimant lacked the qualifications to satisfactorily perform the work involved. Petitioner has not proven that Claimant possessed the necessary knowledge and qualifications as to permit seniority to prevail nor has Petitioner established that the action of the Carrier was arbitrary, capricious or designed to circumvent the Agreement.'

In the instant case Petitioner has not proven that the action of Carrier was arbitrary or capricious or designed to circumvent the Agreement. We will deny the Claim."

Also in point are the Board's Opinions in Award Nos. 9190, 12338, 15164.

We find that Carrier's complained of action was not arbitrary or capricious or designed to circumvent the Agreement. We, therefore, for reasons stated in our Awards, cited *supra*, which are applicable to the instant case, will deny the Claim.

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 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 19th day of December 1968.

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