

Award No. 16932

Docket No. CL-16943

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6200) that:

(1) Carrier violated the current rules of the Clerks' Agreement on October 4, 1965 and continues to violate them by failing and refusing to assign Mr. J. J. Zyck, General Clerk, seniority date April 9, 1943, (1) the position of a junior employe, Mr. M. J. Kiniry, Jr., Chief Clerk, seniority date December 4, 1963 at Wallingford, Connecticut.

(2) Mr. J. J. Zyck shall now be assigned the position Chief Clerk, Wallingford, Connecticut, and compensated for all monetary losses sustained by reason of Carrier's action in denying his request to displace Mr. M. J. Kiniry, Jr., effective October 4, 1965. Claim to continue in force and effect until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: July 12, 1965 this Brotherhood received from Carrier the following notification:

"Mr. R. D. Farquharson, General Chairman
Brotherhood of Railway Clerks
1098 Chapel Street, Room 4
New Haven, Connecticut

Dear Mr. Farquharson:

Referring to Memorandum of Agreement executed January 12, 1965, between this Company and your Organization covering the establishment of a Central Billing Department at New Haven and the initial transfer to that Bureau of inbound billing and cash transactions involving freight formerly performed at the five locations specified in that Agreement:

Please consider this letter as notice, under the provisions of Rule 14 of the Schedule that effective September 1, 1965, the inbound billing, cashier, statements, and collection work involving freight presently being performed at

Meriden
Middletown

Hartford
Springfield

The claim was progressed through the usual channels up to and including the undersigned.

Copies of General Chairman Farquharson's appeal, dated May 10, 1966 and of decision by the undersigned, dated July 7, 1966, are attached as Carrier's Exhibits 1 and 2, respectively.

Copy of Agreement, dated September 15, 1957, between this Company and the Brotherhood of Railway Clerks is on file with this Board. Copy of Agreement dated February 7, 1965, between the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and the employees represented through the Employees' National Conference Committee, Five Cooperating Railway Labor Organizations (including the Brotherhood of Railway Clerks) is also on file with this Board.

The abovementioned Agreements are, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: In August, 1965, Carrier abolished a number of positions at Meriden, Connecticut, including that of the Chief Clerk, occupied by J. J. Zyck. Three positions were created in the Central Building Department, and the employees affected by the abolishments were given the first opportunity to bid for these positions or to exercise displacement rights under the rules of the Agreement.

Mr. Zyck took his four weeks' vacation and chose to displace a junior employee, Mr. M. Kiniry, Jr., Chief Clerk in Wallingford, Connecticut. On August 30, 1965, he was notified by Superintendent D. G. MacLeod that he could not displace Mr. Kiniry, Jr., because he was not qualified. After a conference of representatives of Brotherhood and Superintendent MacLeod, Mr. Zyck was permitted to post on the position between September 28, 1965, and October 2, 1965. During this period it was agreed he was not to be compensated. The record is not clear as to whether Mr. Zyck was notified at the end of the five days that he was not qualified and could not displace on the position. He continued to report at the Wallingford Freight Station to November 17, 1965, when he wrote to the Superintendent stating that he would no longer report for work, but would apply for unemployment benefits. On December 2, 1965, he began working in the New Haven Stores Department as an extra employee, and then was assigned as a regular Trucker on April 15, 1966.

Mr. Zyck claims that Carrier violated the Agreement when it disqualified him from displacing junior employee, Mr. Kiniry, Jr., Chief Clerk at Wallingford Freight office. He maintains that the duties listed for the position that was abolished at Meriden were the same as the duties indicated on the bid notice for the position at Wallingford. Moreover, he urges that his thirty years of service with Carrier gave him seniority over Mr. Kiniry, Jr., who had only three years of service. In short, he maintains that his seniority, fitness, and ability for the position were not recognized, and that he is entitled to the position and compensation for the time he was held off the position beginning October 4, 1965.

Carrier takes the position that Mr. Zyck was not dealt with unfairly and that he was given as much instruction and help as time would permit to

qualify him for the position. He failed, however, to demonstrate his ability to perform the duties and responsibilities of the position. It argues that the refusal to assign him to a position for which he was not qualified did not constitute a violation of the Agreement.

The record indicates that Mr. Zyck was given an opportunity to learn the work during a five-day trial period. In spite of the assistance and instructions by the Agent, he did not give evidence that he could perform the work. Since typing was a requisite for the position, Mr. Zyck lacking this skill, was unable to keep up with the work of completion of the various freight forms and records.

The record further shows that although Mr. Zyck was given additional instructions when he decided to continue to report on the job on his own time, he did not give evidence that he could handle the responsibilities and duties. The Freight Agent said of him, "... he gets confused on debit and credit and excess charges. . . . he keeps asking questions and wants you to answer so that he will not have to be on his own. . . . Mr. Zyck cannot understand a split shipment on memos, . . . His typing is too slow for this job. . . . there is a very large amount of typing at this Station."

From the record we conclude that Carrier gave Mr. Zyck reasonable opportunity to demonstrate his fitness for the position, and that Carrier without bias and prejudice arrived at the decision that he lacked fitness and ability to do the work. Under the circumstances we find no basis for interfering with Carrier's judgment on the qualifications of Mr. Zyck for the position.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.

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