



Award No. 17137

Docket No. CL-17843

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6475) that:

- (a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-3 and 4-A-7, when it improperly disqualified Group 2 Employee J. B. Bailey, Mail Handler, Passenger Station, Terre Haute, Indiana, effective January 2, 1963, rate of pay \$2.33 per hour.
- (b) Claimant J. B. Bailey be restored to the position of Mail Handler, tour of duty 8 P.M. to 4 A.M., start of work week Tuesday through Saturday, rest days Sunday and Monday, and be allowed eight hours pay a day for January 2, 1963, and all subsequent dates until this violation is corrected. (Docket 1888)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline 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 a position and the Pennsylvania Railroad Company —hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, reprinted as of September 1, 1965, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Claimant J. B. Bailey was awarded an Extra List position in the Baggage Room at Terre Haute, Indiana, effective November 17, 1962, and was placed on this position November 19, 1962, at 11:01 A.M. Claimant Bailey was disqualified from this Extra List position on December 28, 1962. He had worked the position a total of thirty-two days out of forty.

Station, Terre Haute, Indiana. This position was similar to the one he had been disqualified from on December 28, 1962.

The Freight Agent, upon being informed that the claimant had been allowed to displace another employe from a position of Mail Handler, issued a letter dated January 2, 1963 to Mr. Bailey, advising him that effective immediately he was disqualified from the Mail Handlers position due to his inability to perform necessary duties. A copy of this letter which was furnished the Division Chairman is attached as Exhibit "C".

The claimant then became furloughed.

Under date of March 21, 1963, the Vice Division Chairman, Brotherhood of Railway and Steamship Clerks, presented a claim, substantially the same as outlined in the Statement of Claim above to Agent R. E. Brown who denied the claim by letter dated March 22, 1963.

The claim was listed and discussed with the Superintendent-Personnel who denied the claim by letter of May 6, 1963, and at the Division Chairman's request, a Joint Submission was prepared, a copy of which is attached as Exhibit "D".

At a meeting on September 21, 1966, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager denied the claim with his letter dated October 13, 1966, copy attached as Exhibit "E".

Through several exchanges of correspondence between the General Chairman and the Manager, Labor Relations, the time limits applicable under Rule 7-B-1(i) were extended culminating in a rediscussion of the claim at special meeting on January 22, 23 and 24, 1968, and the Manager reaffirming his denial by letter dated February 21, 1968 which letter extended the time limits until May 9, 1968. A copy of this letter is attached as Exhibit "F".

Therefore, so far as the Carrier is able to determine, the questions to be decided by your Honorable Board are whether Rules 2-A-3 and 4-A-7 of the applicable Agreement were violated when the Carrier on January 2, 1963, disqualified the Claimant from a position of Mail Handler at Terre Haute Passenger Station, and whether he is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 2, 1963, Claimant "bumped" a regular mail handler position at the Baggage Room at Terre Haute, Indiana. He reported for work, and was disqualified after one hour.

During parts of November and December, 1962, Claimant worked an Extra List position of the same kind and was disqualified on December 28, 1962. During 1961 he was also so employed and there is dispute about the reason for his leaving the position.

We can not, after review of the record, agree that Rules 2-A-3 and/or 4-A-7 were violated.

More pertinent, following Award 14011, is Rule 2-A-2 (b):

"In the assignment of employees to position subject to the application of the provisions of Rules 2-A-1 and 3-C-1, fitness and ability being sufficient, seniority shall govern."

Award 14011 said:

"Carrier, in the exercise of its management prerogative, concluded that Claimant was not possessed of the 'fitness and ability' which the functions of the bulletined position required.

"From our study of the record, we are of the opinion that the following holdings in Award No. 12994, are equally applicable to and decisive of the issue in the instant case:

'Whether an employe possesses sufficient fitness and ability for a position within the meaning of the 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 and arbitrary.' "

In this case we must follow these awards of this Board and 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.