



Award Number 17264
Docket Number CL-18155

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6563) that:

- (1) The Carrier violated the rules of the current agreement, effective July 1, 1963, when it failed to award the position of Car Distributor, St. Paul General Office Operating Department seniority district, to J. P. Joyce on April 5, 1968.
- (2) The Carrier violated the rules of the current agreement, effective July 1, 1963, when it declined to grant J. P. Joyce a hearing pursuant to his request of April 12, 1968.
- (3) J. P. Joyce be assigned to the position of Car Distributor and paid at the rate of \$30.75 per day, subject to subsequent general wage increases, in addition to the compensation already received, commencing with April 5, 1968 and each succeeding workday and holiday, until placed on this position.
- (4) J. P. Joyce be paid all hours worked on an overtime and call basis computed at time and one-half rate by the incumbent of the position of Car Distributor on April 5, 1968 and subsequent dates.
- (5) The rate of \$30.75 per day as increased under subsequent general wage increases be considered J. P. Joyce's protected rate pursuant to the agreement applicable to employees of the merged Northern Pacific, Great Northern, Chicago, Burlington and Quincy and the Spokane, Portland and Seattle Railway Companies when and if the merger of these Carriers is consummated.

EMPLOYEES' STATEMENT OF FACTS: The St. Paul General Office Operating Department seniority district includes the office of General Superintendent of Transportation and the Car Accountant Department.

J. P. Joyce and E. H. Monge have acquired the following seniority dates in the St. Paul General Office Operating Department seniority district:

AGREED TO:
/s/ FRANK D. SHEAHAN

General Chairman

Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees"

On April 12, 1968, Mr. J. P. Joyce, Head Shipment Tracer in the office of Car Accountant, with a seniority date of February 10, 1941, wrote the General Superintendent of Transportation stating he considered himself unjustly treated and requested a hearing as outlined in Rule 54, paragraph (g), of the July 1, 1963 Clerks' Agreement, which reads as follows:

"(g) An employe who considers himself otherwise unjustly treated shall have the right of hearing and appeal as provided in this Rule 54 if written request is made to his immediate superior within ten (10) calendar days of cause of complaint."

On April 19, 1968, General Superintendent of Transportation replied to Mr. Joyce, denying a hearing on the basis that the letter of April 26, 1963 stipulated questions arising as to assignments of car distributors, upon request of the General Chairman, be investigated and handled with the Labor Relations Department.

On May 3, 1968, the Division Chairman of the BRAC wrote the General Superintendent of Transportation presenting a claim in behalf of Mr. J. P. Joyce, stating that nothing in the letter agreement of April 26, 1963 excluded an employe's right to a hearing, and requested a hearing date be set. Also, on May 3, 1968, the Division Chairman of the BRAC presented claim for \$30.75 per day on April 5, 1968 and subsequent dates account Mr. Joyce was not assigned the position of Car Distributor as advertised in Bulletin 502. On May 6, 1968, the General Superintendent of Transportation wrote the Division Chairman declining this claim.

On July 5, 1968, the General Chairman of the BRAC appealed to the Office of Assistant Vice President-Labor Relations, the claims presented in behalf of Mr. Joyce. On July 10, 1968, the appealed claim was declined and subsequently conference was scheduled and held. Copies of the correspondence are attached as Carrier's Exhibit "B".

(Exhibits not reproduced)

OPINION OF BOARD: The dispute herein involves the filling of position of Car Distributor in Carrier's St. Paul General Office Operating Department seniority district, which position was bulletined on April 1, 1968, and awarded on April 5, 1968, to E. H. Monge, who had less seniority than the Claimant. The Claimant had about twenty-seven years of service with the Carrier, and the employe awarded the position had about twenty-six years of service.

Rule 11 of the applicable Agreement provides:

"Rule 11. Except as otherwise provided in this agreement, employes covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

"NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability."

There is also in effect a letter agreement dated April 26, 1963, which provides in part:

"2. Incumbents of positions of car distributors require particular experience and qualifications and in filling such positions the Management is allowed latitude in selecting incumbents for such positions. Should any question arise as to assignments to such positions, the matter will, upon request of the General Chairman, be investigated and handled in the usual manner with this department."

The Petitioner alleges that the Carrier violated Rule 11 in not awarding the position to the Claimant, and that it also violated Rule 54(g) when it did not grant Claimant a hearing pursuant thereto. Rule 54(g), which is part of the Discipline rule, provides:

"(g) An employe who considers himself otherwise unjustly treated shall have the right of hearing and appeal as provided in this Rule 54 if written request is made to his immediate superior within ten (10) calendar days of cause for complaint."

The Board agrees with the Carrier that Rule 54(g) has no application in the circumstances here involved, and that the letter agreement of April 26, 1963, heretofore quoted in part, is a specific rule concerning the filling of car distributor positions. It is a recognized rule of contract construction that a specific rule takes precedence over a general rule. Award 10069 cited and relied upon by the Petitioner did not involve a car distributor position covered by the quoted portion of the letter agreement of April 26, 1963, and as previously covered by letter agreement of March 26, 1946.

In construing rules such as Rule 11 here involved, this Board has consistently adhered to the principle that whether an employe possesses sufficient fitness and ability for a position 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 Awards 16480, 16360, 14765, 12996, among others. There is not sufficient evidence in the record before us that would warrant us to characterize the Carrier's action herein as arbitrary or capricious, particularly in view of the letter agreement of April 26, 1963, providing for latitude on the part of Management in selecting incumbents for car distributor positions.

The claim will be 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 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.

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 30th day of June 1969.