



Award Number 17948

Docket Number CL-18254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6589) that:

- (1) Carrier violated the terms of the currently effective Agreement between the parties on November 13, 1967 and again on November 27, 1967 when it awarded the position of Assistant Bill and Voucher Clerk No. 187 to a junior employe initially on November 13, 1967 and the position of Assistant Bill and Voucher Clerk No. 190 to the same junior employe on November 27, 1967.
- (2) Carrier shall now be required to compensate Mr. B. L. Yeager for the difference in his earnings beginning November 13, 1967 and the rate of the positions denied him, (\$23.9320 per day, plus all subsequent wage increases) for each work day subsequent to November 13, 1967 until the violation ceases to exist.

EMPLOYEES' STATEMENT OF FACTS: On November 7, 1967, Carrier issued Bulletin No. 87 advertising a temporary vacancy in the position of Assistant Bill and Voucher Clerk No. 187 and on November 13, 1967 awarded this position to Mrs. C. J. Strauser, an employe junior to Mr. Yeager. Employees' Exhibits 1(a) and 1(b).

Again on November 20, 1967, in Carrier's Bulletin No. 92, the position of Assistant Bill and Voucher Clerk No. 190 was advertised and again Carrier awarded the position to Mrs. Strauser, an employe junior to Mr. Yeager. Employees' Exhibits 1(c) and 1(d). Mr. Yeager's seniority date is June 13, 1966 and Mrs. Strauser has seniority from September 2, 1966.

The record indicates that the Carrier quite clearly chose the most experienced employe for the vacancies, and totally ignored the Agreement requirements. There is nothing offered by Carrier in the way of probative evidence to indicate that Mr. Yeager did not have sufficient fitness and ability to perform the duties of the positions. It is true that he lacked actual on-the-job experience in some of the duties of the positions, but the record further indicates (Employees' Exhibit 2(d)) that he had been studying the manual in regard to the ICC Uniform System of Accounts and that he is further a well-educated individual and is presently attending college working toward his Master's Degree, having already earned a Bachelor of

On November 13, 1967 the position in question was awarded to C. Strauser (Exhibit 3).

Secondly, on November 20, 1967, the office of Controller issued Bulletin No. 92 advertising a military vacancy on Assistant Bill and Voucher Clerk Position No. 190, also in the office of Auditor-Disbursements. (See Exhibit 4.)

The character of work described in this bulletin was the same as the work described in the bulletin advertising Position No. 187.

Nine individual employees applied for Assistant Bill and Voucher Clerk Position No. 190 as follows:

Name	Seniority Date		Where Employed
	Group 1	Group 2	
B. L. Yeager	6-13-66	6- 6-66	Car Accounting
I. C. Jones	6-22-66	5-23-66	Car Accounting
M. P. Collins	8-22-66	8-22-66	Data Processing
C. Strauser	9- 2-66	9- 1-66	Auditor-Disbursements
C. L. Gregory	10-26-66	10-17-66	Car Accounting
B. D. Edwards	11- 4-66	7-25-66	Car Accounting
J. L. Gooch	5-22-67	5-10-67	Office Services
R. E. Sullins	5-22-67	5-16-67	Auditor-Revenues
W. L. Bogart	9- 1-67	7-25-67	Data Processing

(See Exhibit 5.)

On March 27, 1967 the position was question was awarded to C. Strauser. (See Exhibit 6.)

On April 8, 1968, C. Strauser was displaced from Position No. 190 by an employe senior to both Strauser and Claimant Yeager (see Exhibit 7). C. Strauser then exercised seniority displacement rights on Comptometer Position No. 198 (see Exhibit 8).

Petitioner takes the position that Claimant B. L. Yeager should have been assigned to each position, and hence this dispute.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant herein, on the seniority roster in which he was included, had seniority dating from June 13, 1966.

On November 7, 1967, Carrier issued Bulletin No. 87 advertising a temporary vacancy in Position No. 187—Assistant Bill and Voucher Clerk. On November 11, 13, 1967, the vacancy was awarded to Mrs. Strauser an employe junior to Claimant. Her seniority date was September 2, 1966.

On November 20, 1967, Carrier issued Bulletin No. 92 for position No. 190: Assistant Bill and Voucher Clerk. Claimant also applied for this position which became vacant because the occupant was going on maternity leave. On November 27, 1967, Carrier awarded the position to Mrs. Strauser.

It is Petitioner's position that both of the above referred to positions should have been awarded to Claimant because of his being senior to the successful applicant.

The recitation of "Character of Work" in both Bulletins Nos. 87 and 92 is identical. The concluding paragraph in each reads:

"A thorough knowledge of ICC Uniform System of Accounts for Railroad Companies is essential."

The record indicates that Claimant was not at the time the Bulletins were posted qualified to meet this Specified qualification.

The pertinent provisions of the Agreement are Rules 7, 8, 10 and 16.

"PROMOTION BASIS

"Rule 7. Employees covered by these rules shall be in line for promotion. Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; **fitness and ability being sufficient**, seniority shall prevail, except, however, seniority shall not apply to positions listed in Rule 1, . . . (Emphasis supplied.)

NOTE: The word "sufficient" is intended to more clearly establish that right of the senior employee where two or more employees have adequate fitness and ability.

"DEFINITION SENIORITY RIGHTS

"Rule 8. Wherever the exercise of seniority or seniority rights is referred to in this agreement, it shall be interpreted to mean seniority, fitness and ability as defined in Rule 7."

Rule 10 in pertinent part reads:

"In case senior applicant for bulletined position is not assigned, the senior employee or employees making application shall, upon written request, be advised in writing reasons for their disqualification.

If the final decision decrees that the disqualification was improper, the record shall be cleared."

Rule 16 in pertinent part reads:

"TIME IN WHICH TO QUALIFY

"Rule 16. Employees awarded bulletined position or those displacing junior employee shall be allowed thirty days in which to qualify, and failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

It is understood supervisors will cooperate with employees who are making an effort to qualify.

UNDERSTANDING: This applies after employee is put on position and employee must have sufficient fitness and ability before being placed on position. (Emphasis supplied.)

The seniority rights in Rule 7 are qualified and not absolute as Petitioner would appear to argue. Seniority has meaning and absolute application only when "fitness and ability being sufficient." This is confirmed in Rule 8.

Rule 16 is applicable only when an employee is "awarded bulletined position or those displacing junior employee." (Emphasis supplied.) Neither of those circumstances are present in the instant case.

Rule 10 prescribes sort of an appeals procedure for senior unsuccessful applicants for "bulletined position." They may make written request (to Carrier) to be advised "in writing reasons for their disqualification." Claimant in the instant case did not choose to employ this contractual right.

With Rules identical to Rule 7 of the Agreement before us we have long held that the determination of "fitness and ability being sufficient" is in the first instance reserved to a carrier. The Carrier's determination is a rebuttal presumption; but, the burden that Carrier wrongfully exercised its judgment, when questioned, is vested in Petitioner.

In the instant case Petitioner has failed to introduce any evidence that Claimant possessed, at the time the Bulletins were posted and before awards were made pursuant to said Bulletins, that Claimant did in fact possess at that time the indispensable condition precedent of "fitness and ability" to qualify him to perform the prescribed functions of the positions. Consequently, under the Agreement, his seniority carried no weight in the posture of this case. We, therefore, 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

Carrier did not violate the Agreement.

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 28th day of May 1970.