

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19555  
Docket Number CL-19613

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7053)  
that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it failed to assign Mr. T. L. Tollison, Clerk in the Office of Manager, Car Accounting, to the excepted Chief Clerk position in that office and in lieu thereof assigned Mr. W. F. Daniell, an employee from the Office of Manager, Customer Accounting.

(b) Mr. Tollison shall be compensated the difference in his rate of pay, which at the time of the claim was \$26.88 per day (monthly average rate \$584.64) and that of the Chief Clerk, which at that time was \$770.00 a month, beginning May 3, 1969, and continuing until he is assigned to the position of Chief Clerk.

OPINION OF BOARD: The claimant had been an employee of the Carrier for some forty years, with all of his service in the same department. The position of Chief Clerk (Foreign Claims), Office of Manager Car Accounting, in Carrier's General Office, Atlanta, Ga., became vacant as a result of the regular incumbent retiring. The position involved is an excepted position, subject to being filled under the provisions of Rule 15, which reads:

"RULE 15.

PROMOTION, VACANCIES OR NEW POSITIONS  
NOT FILLED BY SENIORITY

(Revised, effective October 1, 1938).

"Promotions, vacancies or new positions (either excepted or schedule) which are not filled by seniority shall be filled as follows:

Qualifications, merit and capacity being equal, preference shall be given employees in the service in order of their service age, the appointing officer to be the judge, subject to appeal to the highest officer designated by the Carrier to whom appeals may be made, whose decision shall be final."

The claimant was interviewed by the officers in charge and considered for the position, which was assigned to W. F. Daniell, who had been working for the Carrier for about two years. Claim was then filed that Carrier violated the Agreement when it failed to appoint the Claimant to the position.

The Division has considered a number of disputes between the same parties involving the application of Rule 15 of the applicable agreement. In Award 15387 (Dorsey) we held that Rule 15 vests Carrier with the absolute right to determine qualifications with finality. See Also Awards 15784 (McGovern) and 15929 (Ives).

It is well settled that the Board must apply agreements as written and may not, through the guise of interpretation, attempt to amend or alter the terms thereof. Under the clear provisions of Rule 15 the Board is precluded from substituting its judgment for that of the Carrier in the selection of employees for positions filled under the provision of that rule. We have no alternative but to deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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: E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.