ORG. FILE 8-7
CARRIER FILE D-2260
NRAB FILE CL-8401

AWARD NO. 4
CASE NO. 4

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

TO

DISPUTE St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the terms of the currently effective Agreement between the parties when it failed and refused to assign Mr. C. L. Davis, a senior applicant, to the temporary position of Route Clerk No. 38, Springfield, Missouri, for which he was qualified.

(2) Mr. C. L. Davis now be paid for the difference between amounts earned and what he would have earned had he been properly assigned for each date January 7, 1955 to and including April 18, 1955.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

Claimant, who was the incumbent of a Group 3 position, placed a bid for assignment to a temporary vacancy in a Group 1 Route Clerk position. The Carrier awarded the assignment to a junior employe, who was the incumbent of a Group 2 position, upon the ground that Claimant lacked "sufficient fitness and ability" to discharge the duties of the vacancy within the meaning of Rule 7, a note to which reads:

> "The word 'sufficient' is intended to more clearly establish the right of the senior employe where two or more employes have adequate fitness and ability."

Rule 16 "Time in Which to Qualify" reads:

> "Employes awarded bulletined position or those displacing junior employe 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 employe.
>
> "It is understood supervisors will cooperate with employes who are making an effort to qualify.

"UNDERSTANDING: This applies after employe is put on position and employe must have sufficient fitness and ability before being placed on position. Days means calendar days.

"When it is definitely determined, through hearing if desired, that the employe cannot qualify, he may be removed before expiration of thirty days."

Claimant entered the service of the Carrier in 1938 as a freight handler and established seniority as of that date as a Group 3 employe in the laboring group. He was granted military leave of absence 1940-1941 and 1943-1945. He established a 1941 seniority date in Group 1 by performance of work in that group as a Check Clerk. His service with the Carrier has extended over a period of more than 17 years; and in that period he has performed all of his service in Group 3 with the exception of 317 days compensated service as a Clerk in Group 1 consisting of short tours of duty, none exceeding 33 days, each year between 1948 and 1955.

Claimant had previously been used as a Route Clerk, the position under claim, to fill non-bulletined short vacancies for a total of 64 days in the years 1951 through 1953 as follows:

May	1951	4 Days
July	1951	10 Days
Sept.	1951	4 Days
Dec.	1951	12 Days
May	1952	1 Day
June	1952	1 Day
June	1952	2 Days
July	1952	9 Days
Aug.	1952	1 Days
Sept.	1952	9 Days
Dec.	1952	11 Days
Jan.	1953	1 Day

The Group 1 positions at Springfield included clerical work in the passenger station, the yard office and the freight station and platform. It is established by the record that Claimant was not qualified to hold any clerical job off his platform. On the other hand, the employe junior to Claimant, to whom the job in question was awarded, worked mostly in Group 1 positions and so was qualified for work in all three locations.

First. The Organization contends that the Carrier's prior use of Claimant in the position in question during 1951-1953 demonstrates the sufficiency of his fitness and ability to perform the duties of the position.

His prior use was confined to short vacancies, 4 out of 12 of which were for 1 day. Such use is just as consistent with the want of any other qualified available employe as it is with the sufficiency of Claimant's fitness and ability at the time each of these short vacancies arose. Likewise, prior use may be considered as an opportunity to assess fitness and ability rather than as an admission of fitness and ability.

The real point at issue was the adequate fitness and ability of Claimant at the time the assignment was awarded. While prior use over extended periods of time would probably have considerable probative force, we are unable to attach the conclusive weight to prior use which the Organization does.

Second. The Organization also contends that Claimant was "arbitrarily disqualified without any consideration whatever," because he was not allowed the 30 days in which to qualify as provided in Rule 16.

The "Understanding" appended to Rule 16, however, clearly indicates that the Rule applies after the employe is put on the position and that the employe "must have sufficient fitness and ability before being placed on position." This understanding is a clear manifestation of the intention of the parties that the Carrier is under no obligation to undergo the hazard and expense of the qualifying period provided by the Rule, unless the senior applicant has something more to offer than potentiality.

By reason of the duration of Claimant's employment and his prior use on the position in question, the Carrier had an extensive basis, apart from any qualifying period, upon which to consider and assess Claimant's fitness and ability.

Third. The Organization finally charges that the Carrier's supervisors attempted to use every means possible to keep Claimant off the position regardless of the merits of the situation.

The principal basis for this charge is the Carrier's conduct in regard to a trial or test of Claimant's fitness and ability. In the course of handling the dispute the parties agreed to permit Claimant to perform routing clerk work for a day in order to test his capabilities. The Carrier designated a Monday at 4:00 A. M. as the starting time. When the observers arrived at 4:00 A. M., it was found that Claimant had already started work at 3:00 A. M. or 3:20 A. M. Thereupon the parties fell into disagreement over what the agreed terms of the test were. The Organization claimed that Claimant was entitled to warm up with some breaking-in time before 4:00 A. M.; and the Carrier claimed that ability to perform the work within an 8 hour period was of the essence of the test. The Carrier, therefore, declined to conduct the test; and it was abandoned. The Organization also claims that Monday, the day selected by the Carrier for the test, was the heaviest day of the week on that position; but no such claim was made until after the test was abandoned.

Nothing in the Agreement required any such test: it was an attempt to settle the dispute by means of a fair and reasonable test. The best that we can deduce from its abandonment is the failure of the parties to agree fully in advance upon what the terms of a fair and reasonable test should be. In this view, we are unable to find prejudice in the Carrier's refusal to go through with the test.

Upon the basis of a careful examination of the entire record on this charge, we are unable to conclude that the action taken by the Carrier was based upon personal prejudice rather than upon an assessment of Claimant's fitness and ability or that Claimant has been put under perpetual disqualification.

Fourth. The responsibility for the selection of employes and their promotion is the Carrier's; and we should be slow to substitute our judgment based on paper for the Carrier's first-hand judgment on the ground except upon a showing of abuse of discretion.

We are unable to conclude that there was a sufficient showing here to upset the Carrier's determination.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ T. P. Deaton
Carrier Member

/s/ F. H. Wright
Employe Member

Dated at St. Louis, Missouri, July 30, 1958