

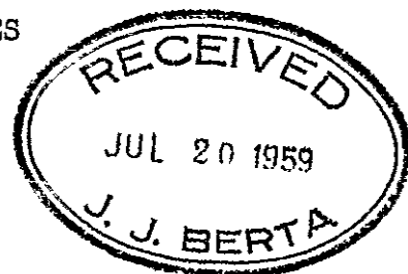
SPECIAL BOARD OF ADJUSTMENT NO. 171

Award No. 55
Case Nos. 54 & 55

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

vs

GREAT NORTHERN RAILWAY COMPANY



STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the current agreement.

1. When on November 26, 1957 Bulletin No. 35, (Carrier's Exhibit C-1) was issued by the Carrier advertising position No. D-60, Head Abstract Clerk, at the rate of \$22.27 per day and declined, on December 3, 1957, to assign Laura J. McCarthy to said advertised position and assigned a junior employee to same.
2. That the Carrier now be required to award the position to Laura J. McCarthy and compensate her for the difference in the rate of pay between the bulletined position and the position that she has been forced to hold for December 3, 1957 and each and every day thereafter that she sustained wage loss account of not being assigned to the position to which her seniority entitled her.

FINDINGS:

The employees state that on November 26, 1957, the Carrier issued Bulletin No. 35 advertising position D-60, Head Abstract Clerk, rate of pay \$22.27 per day; that the major assigned duties were:

"Supervision and instruction of clerks on all abstract desk positions. Sign cash vouchers, voucher checks, journal vouchers and audit bills. Handle correspondence. Prepare various monthly journal vouchers. Check cash voucher and journal voucher abstract entries. Check all monthly and annual statements. Handle all other established routine matters."

The employees further state that on November 26, 1957, the claimant with a seniority date of September 3, 1918, made application for this position; that on December 3, 1957, Carrier posted the assignment of position D-60, and awarded the position to Steven L. Kasinak, with a seniority date of February 4, 1920; that on December 3, 1957, the claimant received a letter signed by J. J. Murray, Auditor Disbursements, in which he rejected her bid for position D-60; the claimant then asked for a hearing stating she felt that she was unjustly treated. As provided for in Rule 58, a hearing was held as requested on December 12, 1957.

The employees further state that the Carrier has discriminated against this claimant due to the fact that she had prevailed in two previous claims that had been heard by the 3rd Division of the National Railroad Adjustment Board. These claims resulted in Awards Nos. 770 and 3102.

Carrier states that the position bid in by this claimant comprised duties that were both of a clerical position of relatively great responsibility, and also the supervision of a group of employees known as Abstract Clerks of which there were eight (8) in number, and this position called for the training, supervision and advising these clerks in respect to their work.

The employees contend that claimant was entitled to the position under the agreement and that the failure to assign her constitutes a violation thereof.

The pertinent provision of the Agreement is Article 3, Rule 7, the applicable parts being as follows:

"Employees 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 clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

The Board finds that the Third Division in its Award No. 3273 reiterated what has been said by the Board in other Awards, namely, that it is a function of management to select competent employees, except when it has limited itself by contract. The right of selection is wholly within the discretion of management. Under rules similar to the rule of this agreement, namely, Rule 7, the Carrier has a right to determine in the first instance the fitness and ability of applicants for a position. Fitness and ability for promotion to a position of greater responsibility must be commensurate with the requirements of the position to be filled. Fitness and ability does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance. It means that the applicant must have such training, experience and character as to raise a reasonable probability that she would be able to perform all the duties of the position within a reasonable time, usually the qualifying period fixed by the Agreement itself, if the Agreement contains a qualifying period. The Carrier is required under the rule to give the position to the senior applicant if her fitness and ability are sufficient. After the Carrier has determined that a senior applicant lacks sufficient fitness and ability, the burden is upon such applicant to establish that she possessed reasonably sufficient fitness and ability to occupy the position. Where there is evidence, which if believed, is sufficient to sustain the Carrier's judgment that a senior employee lacks sufficient fitness and ability

for the position sought, the judgment of the Carrier will not be disturbed. Otherwise stated, whether an employe possesses sufficient fitness and ability for a position within the meaning of the rule is a matter exclusively for the Carrier to determine and such determination once made will be sustained unless it appears that the action of the Carrier was capricious or arbitrary.

We adopt the reasoning as outlined above which is contained in Award No. 3273, and has been stated in several other awards as our reasoning in the instant claim. Therefore, under the foregoing rule and the interpretations thereof, the only question for decision is whether the claimant had sufficient fitness and ability to perform all the duties of the position sought. If she did, she should have been assigned to that position. If she did not, no basis for a claim exists.

After a careful reading of the submissions and a transcript of the investigation and giving due regard to Awards 770 and 3102 of the Third Division, we are obliged to hold under the record before us that no basis is shown for intervention on our part with the judgment exercised by the Carrier in awarding the position of Head Abstract Clerk to Steven L. Kasinak, even though he was junior to the claimant. We find that there was no capricious or arbitrary action by the Carrier in denying the claimant the position of Head Abstract Clerk. The Carrier did not violate the Agreement.

AWARD: Claim denied.

/s/ Thomas C. Begley
Thomas C. Begley, Chairman

/s/ T. C. DeButts
T. C. DeButts, Carrier Member

/s/ C. C. Denewith
C. C. Denewith, Employee Member
I dissent.

Signed at St. Paul, Minnesota, this 23rd day of April, 1959.