

ORG. FILE K-36-10
CARRIER FILE D-3274
NRAB FILE CL-10468

AWARD NO. 30
CASE NO. 30

SPECIAL BOARD OF ADJUSTMENT NO. 194

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

DISPUTE St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the terms of the currently effective Agreement between the parties when on March 2, 1957, it refused to permit senior Clerk George C. Darrah in the Kansas City Terminal seniority district to exercise seniority over a junior Clerk on the Chief Yard Clerk position in the Rosedale Yards upon the allegation that he was not qualified, and without any consideration for his fitness and ability.

(2) George C. Darrah now be allowed the difference between the rate of the Chief Yard Clerk position and the rate of the Per Diem Clerk position No. 14, on which he was required to displace as a result of this violation, \$1.08 per day, from April 29, 1957, to May 20, 1957.

(3) L. G. Whitlock now be paid the difference between the Per Diem Clerk position No. 14 and the rate of Switching Settlement Clerk position No. 13, or 18 cents per day for each date, May 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, account being displaced by Mr. Darrah as a result of this violation.

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

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

This Special Board of Adjustment has jurisdiction over this dispute.

On September 13, 1955, Ryan bid in the Chief Yard Clerk position in Rosedale Yard and he remained so assigned until May 20, 1957, when he was displaced by Poncik who was his senior.

Meanwhile Claimant Darrah, who was senior to Ryan but junior to Poncik, was displaced on his Utility Clerk position on March 1, 1957, which entitled him to exercise displacement rights in accordance with his seniority when a temporary Yard Clerk position, which he had bid in, terminated. Accordingly on March 1, 1957, he notified the Carrier that he wished to exercise his seniority and to displace Ryan on the Chief Yard Clerk position at Rosedale Yard.

On March 2, 1957, the Carrier's Superintendent of Terminals replied as follows:

"You understand that the position of Chief Yard Clerk requires knowledge of the workings of the lead train clerks, IBM operators and in general all yard clerk duties. From my observation, your clerical experience does not fulfill these requirements. It is true you have had limited yard clerical experience, having worked the demurrage clerical position at Centropolis and the balance of your work has been in the local office . . .

"With your limited experience, and due to the numerous transactions that take place daily on the Chief Yard Clerk position, it is not my observation that you are qualified for this position . . ."

On April 19, 1957, Claimant requested the right to spend one week (5 days) of his vacation breaking in on the Chief Yard Clerk position in order to qualify himself. On the same date the Superintendent of Terminals replied saying that, while he had no objection to Claimant's breaking in for 5 days, he was not "in position at this time to change my decision." To which Claimant replied that he would continue to break in on the Chief Yard Clerk position and that, if the Superintendent's position as to his qualifications had not changed by April 29, 1957, he desired to displace, under protest, on another position. The Superintendent of Terminals again denied Claimant's request and this claim ensued.

Claimant entered the Carrier's service May 31, 1941, as an extra messenger. He established Roster 1 seniority April 16, 1942; and from May 31, 1941 to February 1943, when he entered military service, he worked a total of 43 days on clerical jobs as extra yard clerk and extra utility clerk. On his return from military service January 13, 1946, until October 30, 1946, he worked a total of 199 days as extra yard clerk and extra utility clerk and 39 days as lead yard clerk at Rosedale Yard. On October 31, 1946, he was assigned to a yard clerk position at Centropolis and worked that position until displaced March 1, 1957.

Ryan had held positions as yard clerk (1917-1925), switchman (1925), yard clerk (1926-1929), switchman (1929-1934), yard clerk (1942-1946), lead clerk 19th St. Yard (1946-1955) and chief clerk Rosedale Yard (1955-1957).

First. Pursuant to Rule 7 promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. It is well settled that we should be slow to substitute our judgment for the Carrier's except upon a showing of abuse of discretion (SBA No. 194 Award 4 paragraph "Fourth").

Second. It is the Organization's contention that Claimant had sufficient fitness and ability but more particularly that the Carrier unreasonably deprived him of any opportunity to demonstrate his fitness and ability. In effect this is a contention that Claimant was denied rights under Rule 16 the meaning and application of which is discussed in SBA No. 194 Award 4.

Third. The essential difficulty with this case lies in the fact that the junior here had 9 years experience as Lead Clerk and 1 year and 5 months experience as Chief Clerk as against the senior's 39 days experience as a Lead Clerk in 1946 and none thereafter; and that the senior was seeking promotion from a Yard Clerk position in an industrial yard at Centropolis to the Chief Yard Clerk position at Rosedale which involved supervision over the yard clerical force for the entire Kansas City Terminal. Both of these employees may have had equal familiarity with all aspects of yard work; but the essential qualification of this position was fitness and ability to supervise.

While it is true that comparisons of experience without individual assessment of fitness and ability is destructive of rights to promotion and may constitute abuse of discretion (Award 5637), the disparity here is so great that we are unable to conclude that the Carrier acted unreasonably in determining that Claimant had no more to offer than potentiality.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ T. P. Deaton
Carrier Member

I dissent:
/s/ F. H. Wright
Employee Member