

**Award No. 3578**

**Docket No. 3252**

**2-CUT-CM-'60**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE CINCINNATI UNION TERMINAL COMPANY**

**DISPUTE: CLAIM OF EMPLOYEE:**

1. That under the current agreement particularly, Rule 13 (a) thereof, was violated when the Carrier declined to assign Car Cleaner Dorothy R. Weaver to the vacancy bulletined as Vacation Relief Job #5 on which she was the senior applicant.
2. That accordingly the Carrier be ordered to assign this employee to the aforesaid position.

**EMPLOYEES' STATEMENT OF FACTS:** Dorothy R. Weaver, hereinafter referred to as the claimant, is employed by the Cincinnati Union Terminal Company hereinafter referred to as the carrier, as a car cleaner in the car department with a seniority date as such as of 2-22-45. A copy of the Seniority Roster dated January 1958 is submitted herewith and identified as Exhibit A.

On December 19, 1957 the carrier posted Bulletin #244 abolishing car cleaner Relief Job #9. A copy of this bulletin is submitted herewith and identified as Exhibit B. The claimant had been and was assigned to car cleaner vacation relief Job #9 until abolished by the carrier effective end of tour of duty December 31, 1957. In Bulletin #244, the carrier posted a vacancy, car cleaner vacation relief Job #5 (see Exhibit B.) on which the claimant bid by filling out the carrier's vacancy application, Form 21 10M 3-56 FPC, a copy of this application is submitted herewith and identified as Exhibit C.

On December 26, 1957 the carrier posted Bulletin #6 assigning Car Cleaner A. W. Harris, seniority date of 1-30-52 (see Exhibit A) to car cleaner vacation relief Job #5 (no bids), a copy of this bulletin is submitted herewith and identified as Exhibit D.

The agreement effective September 1, 1949, as it has been subsequently amended, is controlling.

In Fourth Division Award 1168 (Referee Vashstoll) we find the following:

"The agreement does not expressly provide that the judgment of Management shall control determination of the qualifications of applicants. In this, it differs from some contracts previously before this Division. (See Awards 660-741-832-938 and 979). However, even in the absence of such express provision, it is properly a managerial function to assess ability, merit and fitness of applicants. (See Third Division Awards 2350 - 4918 - 5238 - 5417 and 5966). In the exercise of that function, Management must act in good faith and its judgement may be neither arbitrary nor capricious and Management must consider standards reasonably related to performance of position under consideration. Once fitness and ability of an applicant has been found by the Carrier to be lacking, the burden rests upon claimant to overcome that finding by substantial and competent proof. (See Third Division Awards 2031 - 2491 - 3273 - 3469 and 4040)."

Carrier has shown the safe course was followed in not assigning claimant to Job #5, also the action of the carrier was not arbitrary, capricious and assignment was made in good faith. The burden of proof rests upon claimant to show otherwise.

The claim is without merit and carrier respectfully requests that claim be denied in its entirety.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The evidence of record discloses the Carrier acted in an arbitrary and capricious manner in disqualifying Claimant Weaver for the subject position, for which she was the senior applicant.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.