

Award No. 4918
Docket No. CL-4896

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That Carrier violated the Agreement when it assigned Mrs. B. Brown to position No. 183 (Comptometer Operator) in Car Accountant's office 63rd Street, Chicago, advertised on Vacancy Bulletin No. 98, dated Dec. 27, 1947, and declined to consider the application of Mrs. E. Leonardi.

(2) That Mrs. E. Leonardi be assigned to position No. 183 (Comptometer Operator) covered by Bulletin No. 98 of December 27, 1947, and that she and any other employee adversely affected be compensated for all monetary loss suffered as a result of Carrier's refusal to abide by the effective rules agreement.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Leonardi was originally employed on April 14, 1943 on "Non-Clerical" position. On March 14, 1944 she was promoted to a "Clerical" position. From the date of her promotion on March 14, 1944 to the Clerical Roster, which covers Comptometer Operator's positions, up to the time she resigned, on date of November 9, 1946, Mrs. Leonardi worked approximately two years as a Comptometer Operator and there was never any question raised as to her qualifications to perform the duties assigned the position of Comptometer Operator.

Mrs. Leonardi was re-employed on July 24, 1947 and placed on a Non-Clerical position at a minimum rate of \$7.28 per day, apparently due to the fact that no vacancy of Comptometer Operator was available at the time. On September 1, 1947, she was promoted to a clerical position and began to accumulate seniority on the Clerical Roster as of that date, (September 1, 1947) retaining her Non-Clerical seniority of July 24, 1947 in accordance with the Agreement. She worked on various clerical positions in keeping with her clerical seniority as of September 1, 1947, and Non-Clerical as of July 24, 1947.

On December 27, 1947, position No. 183, title Comptometer Operator, rate \$9.27 per day was advertised for bids on Vacancy Bulletin No. 98, in the office of Car Accountant, 63rd Street, Chicago. Mrs. Leonardi submitted her application for the position in question, but it was not given proper consideration by the Carrier as provided for in the effective Rules Agreement. The position for which Mrs. Leonardi applied was awarded to Mrs. B. Brown on January 15, 1948. Mrs. Brown first entered service of the Illinois Central Railroad January 15, 1948 and her seniority dates from that date. Before

When Mrs. Leonardi resigned from the service of this Carrier on November 9, 1946, she terminated her employee-employer relationship and concurrent therewith forfeited any rights she may have acquired prior to that date. When Mrs. Leonardi made application for re-employment in July of 1947, she was required to fill out new application papers, take the required physical examination, and was given the standard tests, which tests have been given to all applicants seeking employment in the Chicago area subsequent to June 14, 1946. In other words, when Mrs. Leonardi was re-employed in July of 1947, she entered the service as a new employee, and it was incumbent upon her to meet the qualifying requisites in effect at that time, and not as they had previously existed. Many employees of this Carrier, as well as employees of other large industries, were assigned to positions during the war years because the qualification requirements had been relaxed.

In summation Carrier asserts:

1. Employees have not complied with provisions of Circular No. 1 issued by the National Railroad Adjustment Board on October 10, 1934.
2. Employees' claim has not been presented to and/or handled with the Carrier in accordance with Section 2, Second and Sixth, and Section 3 (i) of the amended Railway Labor Act.
3. Claimant Leonardi was given full and unprejudiced consideration for the disputed position.
4. The Carrier exercised its discretion, according to principles projected by this Board, in declining to award the position to the Claimant after a comprehensive consideration of his fitness and ability.
5. There is no reason to set aside or reverse the decision made by the Carrier in good faith on the basis of the facts presented herein.

OPINION OF BOARD: The facts out of which this dispute arose are, briefly, as follows:

The claimant was first employed for the period of April 14, 1943, to November 9, 1946. During part of this time she held a clerical position and for approximately two years worked as a comptometer operator. She was re-employed July 24, 1947, and on September 1, 1947 was promoted to a clerical position. She worked on various clerical positions including a temporary assignment as comptometer operator from December 16, 1947 to January 12, 1948.

On December 27, 1947, a position as comptometer operator was advertised, and claimant submitted her application. She was given a test on December 30, 1947, to determine her capacity for the job. She performed 27.58% of the problems correctly. The Carrier declined to appoint her to the comptometer operator position.

No other bids from employees on the Seniority Roster were received, and on January, 10, 11 and 12, 1948, the Carrier advertised in a Chicago paper for comptometer operators. Four applications were received, and a result of tests given on January 13, 1949, Mrs. B. Brown was appointed, effective January 15, 1948.

The claimant asserts that the Carrier violated the terms of the Agreement between the Brotherhood and the Carrier and cites Rules 3, 6, 7, 8, 9 and 64. Principal reliance is placed on Rules 6 and 7. Rule 6 reads 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 except, however, that this position shall not apply to the excepted positions.

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."

and the pertinent part of Rule 7 reads as follows:

"(a) New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employees affected for a period of seven (7) days in the districts where they occur; bulletin to show location, title, hours of service and rate of pay. Employees desiring such positions will file their applications with the designated official within that time and an assignment will be made within five (5) days thereafter; the name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined. * * * * *"

The contentions of the claimant are: (a) that subjecting her to a test to determine her fitness for the position was contrary to the Agreement; (b) that because of her prior work as a comptometer operator her fitness and ability were sufficient, and the Carrier was arbitrary and capricious in not giving her an opportunity to demonstrate that she was qualified. On argument it was further contended that when Mrs. Brown was appointed, the bulletin had expired and as the position was not re-bulletined the appointment is invalid under the Agreement.

The contention of the Carrier is that (a) the claim for pay for any other employee adversely affected "was not handled on the property"; (b) that the Carrier is the sole judge of the fitness and ability of an employee for any position.

Reliance is placed by the claimant on Award 3139 as supporting her contention that her prior work established her fitness for the promotion. But Award 3139 deals with a special agreement between the parties and the sustaining award is based on the proposition that the Carrier cannot deny promotion to an employee holding seniority solely on the grounds of lack of experience.

Award 3469 is also relied upon by claimant. The opinion in that award states the general rule that it is the function of management to select employees; that after the Carrier has determined that a senior applicant lacks sufficient fitness, the burden is upon the applicant to establish that he possesses sufficient fitness and ability to occupy the position. The Board then found the Carrier had made no complaint with reference to claimant's work except that he had filled subordinate positions which were not the kind that would be of assistance in qualifying him for the position in question. One instance was pointed out that claimant when holding a position for 30 days failed, within 20%, of handling position in same manner as his experienced predecessor. But such a record is distinguishable from a record showing that a comptometer operator was on July 22, 1947, 24.14% accurate and five months later was 27.58% accurate.

Fitness for a position would seem to imply an inherent capacity to master the requirements of the job. It does not mean that the applicant would commence a new job with a 100% record; but that her natural ability and experience would within a reasonable time permit her to do standard quality work. The Carrier, acting in good faith, must determine fitness. In the instant case it is to be noted that the claimant, when she applied for a job in 1947, did not claim to be a comptometer operator; and the Carrier, who knew of her "experience" gave her a non-clerical job of Sorter. Further, the tests given her at widely separate times did not show any material advancement in skill. We must conclude, therefore that the Carrier in denying claimant the promotion had reasonable basis for judging fitness and did not act arbitrarily or capriciously. Rule 6 is not a guarantee of promotion.

The requirement of the Carrier that applicants for the comptometer job take certain tests is not in violation of the Agreement. If the Rule is valid that management shall be the judge of fitness, then the Carrier may require a test to assist it in determining fitness of an applicant. (See Award 82). There is no evidence that the tests given the claimant were inappropriate, or unfair or administered in an unfair manner.

On argument it was contended that the appointment of Mrs. Brown was invalid because the bulletin of December 27 had expired and the job was not re-bulletined and in effect under Rule 7 when she was appointed. This aspect of the case does not appear to have been discussed on the property. Rule 7 is for the benefit of the employees and has no application to non-employees. The purpose of the rule was satisfied when the position was bulletined, and the filling of the position by a new employee a short time after the bulletin expired was not a violation. We express no opinion, however, as to the validity of an appointment when a longer time has elapsed between the posting of the bulletin and the employment of a person who holds no seniority.

For the reasons thus expressed, we conclude that the claim is without merit.

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 employee involved in this dispute are respectively carrier and employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.