Award No. 12528
Docket No. CL-12375

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4899) that:

1. Carrier violated the terms of the current Clerks' Agreement in the office of the General Agent at St. Louis, Missouri, on October 21, 1959, when it arbitrarily removed Mr. George Mertensmeyer from the position of Waybill Typist No. 29 and;

2. Mr. George Mertensmeyer shall now be returned to the position of Waybill Typist No. 29 and;

3. Mr. George Mertensmeyer shall be compensated for all wage losses sustained on and after October 21, 1959.

NOTE: Reparations to be determined by a joint check of the Carrier's payroll and other pertinent records.

EMPLOYES' STATEMENT OF FACTS:

1. As a result of Bulletin No. 44 dated October 9, 1959, vacancy on position of Waybill Typist No. 29 was advertised and on Friday, October 16, Mr. George Mertensmeyer was assigned. Prior to this assignment, the Agent called Mr. Mertensmeyer into his office on October 15, advising him that he was the senior applicant for the position, but that there was some doubt as to his qualifications to perform the duties of the position due to his past performance on various clerical positions in that office especially the position of Inbound Expense Clerk which he held for approximately two years. Mr. Mertensmeyer advised that it was his opinion he could perform the duties of the position. After being assigned on October 16, he requested that he be given permission to break in on the position and on the afternoon of October 19 after breaking in that day, he advised the Agent that he was ready to take over the position on October 20th. Mr. Mertensmeyer worked the position on October 20 and after working it for approximately six and one half hours,

Second. The Organization also contends that claimant was 'arbitrarily disqualified without any consideration whatever,' because he was not allowed the thirty 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."

Also, see Award No. 30 of SBA No. 194.

Digressing momentarily from claimant's fitness and ability, William T. Lawler, with Group 2 seniority date of July 15, 1942, Group 1 seniority date of March 16, 1943, has performed service on both Inbound Expense Bill Clerk position No. 30 and Outbound Waybill-Typist position No. 29 at intervals up to one year since September 4, 1954. This employe was assigned to Outbound Waybill-Typist position No. 29 on October 27, 1959, and had no difficulty in fulfilling the requirements of the position.

While it is true that claimant is senior to Lawler, the rules under consideration set out methods by which certain standards are to be given consideration in filling vacancies. It was said in Award 6844 (Rader) that:

"Seniority is a valuable asset and should be carefully guarded, however, the rules under consideration do set out methods by which certain standards are to be given consideration in filling vacancies. The power to fill is given Carrier. Its use of the same is limited by these rules and in the absence of a strong showing that the right has been misused we should not substitute our judgment for that of the Carrier. We do not believe the showing made is sufficient and on that basis we deny the claim."

Also see Award 9249 (Stone).

The claim of the employes is completely lacking in merit and Agreement support and should be denied in its entirety. The Carrier respectfully requests this Board to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: Mr. George Mertensmeyer, Claimant, bid for and received the vacancy on the position of Waybill Typist No. 29. Previous to the award of this assignment, for two years he occupied the position of expense clerk. On Monday, October 19, 1959, he broke in on the position and in the afternoon of the same day informed the agent he was ready to assume his new assignment the next day. During Claimant's first day on the position, October 20, the chief clerk advised the agent that Mr. Mertensmeyer's

production was not satisfactory and that he would not be able to qualify on the job. On October 21 a Methods Analyst was called in to make a time study to determine the cause of Claimant's low production. After his findings were reported, Claimant was removed from the position and disqualified at 3:30 P. M. on October 21.

Mr. Mertensmeyer takes the position that his fitness and ability were sufficient to have his seniority prevail in awarding him the promotion under Rule 7, "Promotion Basis". He maintains that having secured the position he was entitled to a 30 day period in which to qualify under Rule 16. He asserts Carrier prematurely and arbitrarily disqualified and removed him without a hearing.

Carrier denies the claim with the contention that Mr. Mertensmeyer received an opportunity to qualify under Rule 16 but failed to meet the volume of production of the position. It points to the study of the Methods Analyst and a hearing as evidence to refute the charge that Carrier acted arbitrarily in removing Claimant.

We note from the record that when the position was bulletined Carrier questioned Claimant's fitness and ability in view of his performance on his previous job. Consequently a meeting was arranged with two of Organization's representatives and the chief clerk. At this conference Claimant, who was also present, was emphatically informed of the importance of the production volume in the position under consideration and that he would be disqualified immediately if he allowed the work to stack up. This conditional arrangement was accepted.

Despite knowledge of the production expected of him, Mr. Mertensmeyer insisted he could handle the job after breaking in for only one day. On the first day on the new position he typed only 56 Waybills, a number far below what employes generally do in that type of work. There was no change in the volume requirements for the job when Claimant assumed it. The awareness of Mr. Mertensmeyer's lack of fitness to meet the needs of the position let to Carrier's analysis of his performance by a Methods Analyst who indicated that his low production resulted from his inability to use the touch typing system. Although Claimant's output increased on the second day on the job, it was apparent that his deficiency in the use of the machine handicapped him and would prevent him from reaching the efficiency required in meeting a daily deadline of this position.

We find that Carrier in exercising its right and responsibility for selection and promotion of employes did not violate Rule 7 which states that promotions should be based on seniority provided fitness and ability are sufficient. In the instant case the record is clear that Carrier at the very beginning questioned Claimant's fitness and his acceptance for the position was provisional after consultation with Claimant and Organization's representatives.

Under the provisions of Rule 16 an employe may be removed before 30 days if the cannot qualify for the position. That Mr. Mertensmeyer was not able to meet the needs of the position was recognized the first day; and although Claimant was told he would be removed if he could not qualify, he was not discharged until the second day, after the Analyst confirmed his inability to meet the daily deadlines. Such consideration cannot be regarded as arbitrary and capricious.

Contrary to Claimant's allegation that he did not receive a hearing provided for in Rule 16, the record shows that Claimant made a request for review five days after his removal from the position and that his request was granted at a later date. This hearing further supports our position that Carrier did not act arbitrarily and capriciously.

We, therefore, hold that the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.