



Award No. 15164

Docket No. CL-15750

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5783) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it denied Mrs. Margie H. Bridges, the displacement rights that had accrued to her under our Agreement rules when she was not allowed to displace on a Comptometer Operator position, a position to which she had at one time been assigned.

(b) Mrs. Bridges shall be compensated at the rate of \$19.37 each day, five days a week, for the period beginning January 2, 1964, and continuing until she is permitted her displacement rights on a Comptometer position by the Carrier in their offices in Atlanta, Georgia.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimant in this case held position and the Southern Railway Company.

Mrs. Margie H. Bridges is carried on the Southern Railway System, Accounting Department, Seniority Roster — Group 1, Clerks, Office of Director Revenue Accounting (Passenger Division) with a seniority date of February 4, 1943. She, at the time of this claim, had been an employe of the Southern Railway Company for more than twenty years.

Mrs. Bridges accrued a displacement, under the provisions of our Agreement rules, effective December 1, 1963. She elected to take the thirty days to which she is entitled under our rules, during which period she did, at no expense to the Carrier, practice operating the comptometer machine. Upon attempting to displace in her home seniority district on a Comptometer position, she was required to take a comptometer test. She was informed that she had failed to pass the test and was not allowed to displace on a comptometer position.

NOTE NO. 1: The word 'sufficient' as used above is intended to establish the right of the senior **qualified** employees to be assigned to new positions or vacancies covered by Section (a) of this Rule 16 over junior qualified employees." (Emphasis ours.)

"RULE 20. ABOLISHING POSITIONS

(Effective October 1, 1938)

When forces are reduced the position to be abolished shall be the position or positions which are no longer needed; if there be two or more positions doing the same kind of work paying different rates in the office where such abolishment is to be effected, the position paying the lowest rate shall be abolished.

* * * * *

"RULE 21.

REDUCING FORCES AND EXERCISING SENIORITY

(Revised, effective October 1, 1938)

(a) When forces are reduced, employees affected will be given all reasonable notice practicable (in no case less than thirty-six (36) hours) and will be eligible to any position on their respective seniority district to which their seniority **and qualifications** entitle them under this schedule. Employees, other than those embraced in Groups 4 and 5 will be required to avail themselves of this rule within thirty (30) days.

* * * * *

(Emphasis ours.)

(Exhibits not reproduced.)

OPINION OF BOARD: The pertinent provisions of agreements which we have been petitioned to interpret and apply are from the basic Agreement:

"RULE 21.

REDUCING FORCES AND EXERCISING SENIORITY

* * * * *

(a) When forces are reduced, employees affected will be given all reasonable notice practicable (in no case less than thirty-six (36) hours) and will be eligible to any position on their respective seniority district to which their seniority and qualifications entitle them under this schedule. . . ."

and from a Mediation Agreement:

**"Procedure for Determining Employees' Qualifications
Mediation Agreement Dated April 21, 1932**

SETTLEMENT: The management expresses a sympathetic interest in the advancement of all employees and agrees to the following procedure, under the rules in effect, to insure a fair basis for determining qualifications:

(1) When employees are assigned to positions requiring duties with which they are not familiar, the supervising officer will upon request furnish the employee at the time of assignment with a written statement giving a general and comprehensive description of the predominant duties and responsibilities, whether supervisory or otherwise, make available all necessary instructions, and from time to time assist the employee with a view to enabling him to qualify to perform the duties thereof, but such assistance shall not take precedence over other duties of the officer in charge.

(2) If after a fair trial an employee is disqualified he will be given the reasons therefore, and such disqualifications will debar him from the right to seek to make another displacement. When possible to secure tangible evidence it will be used to support the judgment of the supervising official, and the employee will be entitled to receive a photostat or other copy of such evidence upon request.

(3) In event a hearing is held in connection with a case of this kind, either before or after assignment to the position sought, the management will insert in the transcript of the hearing a copy of the statement of duties and responsibilities of the position in question, and the employee will insert therein a statement of his education, training, and experience which he claims have fitted him to undertake the new work. All questions and answers in such hearings will be confined to the clear purpose of establishing the applicant's ability or lack of ability to perform the required duties.

(4) When an employee desires to learn the duties of a position held by a junior employee, with a view to making a displacement thereon, he will be allowed as a preliminary step in the making of such displacement to study and observe the actual performance of the duties by the incumbent employee, who will be permitted to furnish all information desired by the applicant employee in learning the work. It is understood that this student service is to be optional with the applicant and without expense to the Carrier.

(5) The procedure herein set up shall not in any manner affect the right of the employees to make displacement or the prerogatives reserved to the management in making assignments, as respectively provided in the present Clerks' Agreement."

Claimant by choice sought to displace a junior employee on a Comptometer Position. For 30 days she sought to learn the position in the manner prescribed in paragraph 4 of the Mediation Agreement. She was then given a test by Carrier. From the test Carrier held Claimant was not qualified to per-

form the duties of Comptometer Operator; and, it denied Claimant's displacement request.

Petitioner contends that Claimant should have been placed on the Comptometer Operator position and have on the job training as contemplated by paragraphs (1) and (2) of the Mediation Agreement. Further that "A test given to an employee who has not had continual and daily opportunity to perform the required tasks is not a proper 'fair chance' as required by" paragraph (2) of the Mediation Agreement.

Carrier argues that paragraphs (1) and (2) of the Mediation Agreement are applicable only to employees "assigned to positions"; and not applicable to an employee seeking to displace by choice. Further that the applicable provisions of the Mediation Agreement are paragraphs (4) and (5); and, (5) must be read in conjunction with the excerpt from Rule 21, *supra*.

We find the Carrier's position to be well taken.

The right of Claimant to displace on the Comptometer Position was dependent on her satisfying the conjunctive conditions of "seniority and qualifications."

In Award No. 13331 in which we interpreted a rule practically identical to Rule 21, here involved, we held:

"Assuming the proposition that Rule 12 is applicable, we note that it prescribes two conjunctive co-existing conditions for displacing a junior employee: (1) 'seniority'; (2) 'qualifications.' The first condition is admittedly satisfied. We are, therefore, concerned only with 'qualifications.'

Claimant's argument is premised on the over simplified and legally unsupportable philosophy that seniority rights vest a senior employee with the right to displace a junior. It overlooks the fact that seniority rights are not inherent but born of, prescribed in, and circumscribed by contract.

As used in Rule 12, the word 'qualifications' means qualifications as of the time; not qualifications which might be acquired in the future. Therefore, since Claimant did not possess 'qualifications' for the position held by the junior employee at the time he sought to displace the junior, the Agreement does not support Claimant's interpretation of the Agreement. We will deny the Claim."

This Division has consistently held that we will not disturb management's decision as to an employee's qualification except when there is substantial evidence in the record that it was arrived at in an arbitrary or capricious manner or evasion of contractual obligations. See, for example, Award Nos. 9927, 10000, 12433, 12994, 13876, 14011. We find no evidence in this record which supports the application of any of the exceptions. We will deny the claim.

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 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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.