

Award No. 15626
Docket No. CL-15939

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5842) that:

(1) Carrier violated the Rules and provisions of the Clerks' Agreement when on April 16, 1964, it failed and refused to assign Miss Ada C. Duffy to the position of Ticket Office Clerk at Miami, Florida, and assigned a clerk (F. W. Wilson) six years her junior and with only six months seniority to the position.

(2) That Miss Ada C. Duffy be paid the difference in the daily rate of pay of the Ticket Office Clerk's position and Telephone Operator's position for April 16, 1964 and the same each day subsequent thereto that F. W. Wilson is worked on a position in the Reservation Bureau at Miami, Florida.

EMPLOYEES' STATEMENT OF FACTS: The facts are contained in the investigation attached hereto as Employees' Exhibit A and further page references and facts are contained therein.

Miss Ada C. Duffy, hereinafter referred to as Claimant, had worked in the Reservation Bureau for approximately eight years as a telephone switchboard operator and at various periods during that time had schooled on the reservations' positions under the direction of Mrs. Mary T. Fisher who testified at the investigation that Claimant was an apt pupil and that she did a good job as a reservation clerk while she occupied the position (page 11), was a good clerk and did her work (page 12).

Mrs. Fisher trains new employees, (page 10) and is the only employee who, prior to the instant claim, had been required to take a written examination (page 3) and that was several years ago and, in such capacity was certainly, qualified to know Claimant's qualifications.

Pages 3 and 4 show that Claimant worked on two different positions in the Reservations department in the month of July 1963 for a total of twenty

In summary, the investigation was fairly conducted in accordance with your request and fully developed that Miss Duffy was not qualified for the position she sought. She has been fairly treated and your appeal is respectfully declined."

GENERAL CHAIRMAN YOUNGER
TO DIRECTOR OF PERSONNEL, NOVEMBER 11, 1964

"This will appeal the decision of Mr. J. R. Getty, General Passenger Traffic Manager dated September 16, 1964, declining the attached claims for Miss Ada C. Duffy telephone operator at Miami, Florida.

Please review the attached claims and the investigation in connection therewith and advise when claim will be paid in accordance with attached."

DIRECTOR OF PERSONNEL TO
GENERAL CHAIRMAN YOUNGER, NOVEMBER 20, 1964

"This will refer to your letter of November 11, 1964, appealing to me the decision of General Passenger Traffic Manager J. R. Getty in claim on behalf of Miss Ada C. Duffy, your file G-13, Duffy, Miss Ada C. and C-2 Miami.

I have reviewed the transcript of the investigation held at Miami on June 5, 1964, pursuant to your request under Rule 28. I have also reviewed the handling of this case with Mr. Ficht and Mr. Getty. Upon full consideration of the record in the case, I feel that Miss Duffy was given a fair and impartial investigation and that the decision of Mr. Getty expressed in his letter of September 16, 1964 was proper. Third Division Awards 12419, 12394 and 12433 support that decision. Therefore, I must respectfully decline your appeal of his decision."

The matter was discussed by the General Chairman with the Director of Personnel in conference beginning January 12, 1965, at which time the Director of Personnel reaffirmed his decision of declination. Subsequent thereto by letters of April 22 and July 21, 1965, the Director of Personnel granted the General Chairman extensions of time permitted under Rule 27(c) to appeal the decision in the claim of Miss Duffy.

OPINION OF BOARD: Claimant in this case had worked in the Reservation Bureau for approximately eight years as a telephone switchboard operator and on several occasions during that period had filled the job to which she now aspires. A junior employe with six months seniority was assigned to the position, and Claimant submits for our consideration that Carrier, by assigning this position to a junior employe was in violation principally of Rule 9 (Promotion, Assignment and Displacement Basis) and Rule 16 (Time in which to qualify).

Rule 9 is the standard "seniority, fitness and ability" rule which provides that seniority will govern "when two or more employes have adequate fitness and ability." The Carrier, uncertain about the ability of the Claimant to handle the additional responsibilities inherent in this position of Ticket Office Clerk, despite the fact that she had worked the position on several days previously, requested the Claimant to take a written examination to ascertain her fitness for the job. Claimant refused to do so.

The question with which we are essentially confronted is whether the Carrier engaged in arbitrary, unreasonable and capricious action by requiring the Claimant to take an examination to determine her fitness. It is a general rule that the Carrier, in its exercise of managerial prerogatives, is the sole Judge of an employe's fitness and ability in the absence of an agreement provision to the contrary. There is no such agreement in the contract signed by the parties.

The requirement that the Claimant had to take the test is not of itself unreasonable, nor does it per se indicate an abuse of managerial discretion. It is quite conceivable that an examination could be tantamount to, and in fact constitute that degree of unreasonableness that we would be left with no alternative other than to sustain the Claim. Carrier could make the test so difficult, so complex that it would have no relationship to making the final determination of "fitness and ability." We of course find no such record before us. Claimant never submitted herself to the examination, the taking of which management had a right to insist upon. [See Awards 12394 (Wolf), 12461 (Dorsey), 13351 (Bailer).]

In Awards 11121-4, where Claimants also refused to take tests, the Board stated that Claimants' "refusal to take such an examination is inconsistent with his claim that he was qualified." We find from a review of the record and particularly the investigation conducted, that the Carrier's decision in this matter was made in good faith upon substantial evidence and was not the result of either arbitrary or capricious action. We will deny the Claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement 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 16th day of June 1967.