

Award No. 16871
Docket No. CL-17414

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6373) that:

(1) Carrier violated the current Clerks' Agreement at Moraine, Ohio on Saturday, October 30, 1965, when it denied Mr. James Fershee, furloughed Yard Clerk his seniority in rejecting Mr. Fershee's bid for Relief Car Control Clerk position.

(2) Carrier shall now compensate Mr. James Fershee for eight (8) hours' pay at the pro rata rate of the Relief Car Control Clerk position for Saturday, October 30, 1965 (plus all subsequent general wage increases) and each subsequent day thereafter, Saturday through Wednesday of each week.

(3) Claim to be continuous from October 30, 1965 for all wage and other loss to which Mr. Freshee would have been entitled to if he had been awarded the position in accordance with his seniority.

EMPLOYES' STATEMENT OF FACTS: Mr. James Fershee entered the services of the Carrier as a Yard Clerk at Moraine, Ohio, on September 24, 1956. Mr. Fershee continued working for the Carrier as a Yard Clerk until 1964 when the Carrier mechanized their yard and consolidated the functions of work being performed manually by Mr. Fershee, into the Mechanical Car Reporting System. The Carrier disqualified Mr. Fershee from Mechanical Car Reporting Position No. 6 on November 9, 1964. There were no employees junior to Mr. Fershee whom he could displace, therefore, he had to accept the status of a furloughed employee.

Under date of October 20, 1965, the Carrier bulletined a position of Relief Car Control Clerk. (See Employes' Exhibit A.)

Moraine, Ohio, a mechanized Demurrage and Industrial Car Control System (DICCS). Briefly, this System consists of a Center within an industrial terminal area manned by Car Control Clerks, who make direct contact with the industries and inform them of the arrival of their cars, receive their instructions for the placement of cars, accept their orders for empty equipment needed for loading, receive orders for the re-spotting of cars within their plants, and orders for the release of cars when made empty. The new system instituted an IBM Card system to replace hand written records formerly maintained for demurrage purposes. Car Control Clerks key punch the car movement information into an IBM Card, and file the card according to the location of the car. When the car is moved, information as to its move and new location is key punched into the card. The machine operation in the Demurrage and Industrial Car Control System is much more complicated than Mechanized Car Reporting machine operation, requiring more detail on the accurate and complete IBM record to ensure prompt billing of correct demurrage charges.

On October 20, 1965, the Agent at Moraine, Ohio, issued Bulletin No. 19 advertising a vacancy on Relief Car Control Clerk Position No. 9 at Moraine to relieve Chief Car Control Clerk Position No. 15 on Saturdays and Sundays, Car Control Clerk Position No. 17 on Mondays, and Car Control Clerk Position No. 18 on Tuesdays and Wednesdays. A reproduction of the bulletin is attached as Carrier's Exhibit No. 3. The duties of the positions relieved also required performance of mechanized car reporting duties, but the major portion of the duties consisted of Demurrage and Industrial Car Control work. Mr. Fershee submitted a bid for Position No. 9.

Prior to his disqualification on November 9, 1964, Mr. Fershee had not received any training in Demurrage Industrial Car Control System work. His original employment as a clerk was on a yard clerk assignment requiring no IBM machine operating procedures. His disqualification resulted from his failing to learn these procedures on a position involving only mechanized car reporting work. Since he could not qualify on the comparatively simple machine operation involved in the mechanized car reporting work, Carrier determined he did not possess sufficient fitness and ability to meet the speed and accuracy requirements in the key punching duties and other machine procedures required of Demurrage and Industrial Car Control positions, and rejected Mr. Fershee's bid.

Carrier's action resulted in the claim herein progressed.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in the case at bar are not in dispute. In October of 1965 the Claimant was a furloughed clerk in the Carrier's employ holding seniority dating from September of 1956. On October 20, 1965, the Carrier bulletined the position of relief car control clerk. The Claimant bid on the position within the proper time. On October 29, 1965, the Carrier awarded the position to an employe with seniority dating from July 6, 1965. The Organization then filed the claim herein on behalf of Claimant.

The rules relied on by the Claimant are Rules 2 and 3 of the Agreement and Section 14 of the Memorandum Agreement dated February 13, 1964, which rules read as follows:

"RULE 2.
SENIORITY AND PROMOTION

Seniority begins at the time the employee's pay starts in the seniority district last employed, and promotions shall be filled in accordance with seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail — the Management to be the judge — subject to appeal. This rule shall not operate to deprive any employee of his present seniority established prior to the adoption of this agreement."

* * * * *

"RULE 3.
FAILURE TO QUALIFY

After employees are awarded bulletined positions in accordance with Rule 2, they will be allowed thirty (30) days in which to qualify and failing, shall retain all their seniority rights, may bid on any bulletined position but may not displace any regularly assigned employees.

When an employee bids for and is awarded a permanent position, his former position will be declared vacant and bulletined."

"SECTION 14.

When, as a result of the mechanization and transfer of work contemplated by this Agreement, employees who are assigned to or displace on machine or key punch operator positions, on or after the effective date of this Agreement, who require training, will be given the necessary training in the operation of the machines they are required to operate, prior to assuming the duties of the positions. Employees receiving such training will be paid at the pro rata rate of pay of the position on which they are receiving training or at their guaranteed rates, whichever is higher, for the time so spent. Training will be accorded during regular assigned hours, if possible."

The Organization claimed that under Rule 2 of the Agreement the Claimant was the senior employee and entitled to the work. The Carrier replied that the Claimant was not qualified to perform the work on the position. It was the position of the Carrier that Claimant did not possess the necessary fitness and ability. The Organization responded that under Section 14 of the Memorandum Agreement the Carrier was required to give the Claimant the necessary training to qualify for the position. It is clear from the record that, pursuant to Section 14, less than a year prior to the date of this dispute, the Carrier had given the Claimant intensive and extensive training as an IBM key punch operator in an attempt to aid him in qualifying for another position. The evidence shows without conflict that the Claimant was unable to grasp the essentials of this type of machine work.

In October of 1965 the Carrier made the determination that the Claimant did not possess the necessary fitness and ability to enable him to perform the

functions of the bulletined position which is the subject of this claim. It is the position of the Organization that the Claimant's prior disqualification has no bearing on his fitness and ability to perform the work of the present position. They claim that if he was not qualified the Carrier had the obligation under Section 14 of the Memorandum Agreement to provide him with the necessary training so that he might qualify.

With this we cannot agree. It is obvious from the record that IBM key punch work is an essential element of the position in question. The Awards are legion that it is the Carrier's prerogative to determine the fitness and ability of an employee for a particular position. See Awards 15780, 15494, 14976, and 13876 among others. Less a showing that the Carrier's determination as to fitness and ability is arbitrary and capricious it will not be disturbed. The burden is on the Petitioner to make such a showing. See Awards 16546, 16360, 16309 and 15494 among others. We find no showing that the Carrier's actions were arbitrary and capricious.

In the matter before us the presence of Section 14 of the Memorandum Agreement does place an additional burden on the Carrier. Reading Section 14 and Rule 2 together, absent the extensive training on IBM equipment given the Claimant earlier, the Carrier would be required to give the Claimant training on the machine in order that he qualify for the position to which he would be entitled on the basis of seniority. The record is clear however that the training given by the Carrier should have been more than sufficient and yet the Claimant was unable to meet the minimum requirements to operate IBM key punch equipment. The Carrier has fulfilled the obligation placed upon it by Section 14 of the Memorandum Agreement.

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 24th day of January 1969.

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