Award No. 17177
Docket No. CL-17352

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

INDIANA HARBOR BELT RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6345) that:

1. The Carrier violated the Clerks' Agreement when on January 4th, 1966, it failed to assign C. L. Kinsey to bulletined position #915, Clerk in the Superintendent's office.

2. The Carrier shall now be required to pay C. L. Kinsey the difference in rate of pay between position #915 and that of the position(s) he occupied since that date, starting with January 5th, 1966, and each work day after that date.

EMPLOYES' STATEMENT OF FACTS: Position #915 was bulletined on December 27th, 1965 (Employes' Exhibit A) as Clerk in the Superintendent's office, with principle duties of preparing various reports.

C. L. Kinsey, with a seniority date of November 18th, 1936, filed application (Employes' Exhibit B) for position #915 on December 30th, 1965.

On January 4th, 1966, a bulletin was issued by the Superintendent (Employes' Exhibit C) advising that position #915 had been awarded to F. L. Holly, seniority dating of June 5th, 1942.

On March 3rd, 1966, the Local Chairman filed a claim in behalf of C. L. Kinsey for the difference in rate of pay between C. L. Kinsey's position and that of position #915 for January 5th, 1966, and each subsequent date, account of Carrier's failure to assign the position to the senior bidder, with sufficient fitness and ability. C. L. Kinsey was the senior bidder, and C. L. Kinsey has certainly established sufficient fitness and ability during his 30 years on the railroad in various capacities without a record of any complaint regarding his work.

This claim was handled on the property up to and including the highest officer, resulting in a denial dated September 20th, 1966. The Carrier has granted a three months extension of time limits for final handling.

(Exhibits not reproduced)

"In reference to your letter dated December 28, 1966, concerning claim of Mr. C. L. Kinsey in connection with assignment on Position No. 915.

"At a meeting on August 17, 1966, representatives of this office attempted to explain the designated duties of the assignment in question and the Carrier's position of their determinations made in this case. Further, in an effort to clarify this information and the questions seemingly involved, a further check was made and in a letter dated September 20, 1966, Carrier set forth a general description of the duties involved in this position and the manner in which the determination was made.

"In view of the previous handling in this particular dispute, I would appreciate an explanation of what further information is hoped to be determined in a further check at this time and how such information could be used to bring about a solution in this dispute."

The claim was again discussed in conference with the General Chairman on July 6, 1967, at which time Carrier again set forth its reasons for rejecting Claimant Kinsey's bid for Position No. 915.

On September 20, 1966, Carrier granted the Organization an appropriate extension of time to further handle this claim.

(Exhibits not reproduced)

OPINION OF BOARD: This is a fitness and ability case.

In such cases, this Board has historically recognized the right of Management to determine the fitness and ability of an employee for a particular position and in addition has established the principle that Carrier's exercise of that right will not be disturbed unless it can be shown by a preponderance of the evidence that Carrier acted arbitrarily and capriciously.

In the instant case the Organization has not proven that Carrier acted arbitrarily and capriciously.

Consequently, the claim is hereby denied.

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

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 23rd day of May 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.