



Award Number 17378

Docket Number CL-16329

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5976) that:

- (a) The Carrier violated the Agreement when it failed and refused to assign Mr. W. L. Milam, Head Computer Operator, 705 Computer, to the position of Head Computer Operator, 7040-44 Computer, as advertised in Bulletin No. 10 of September 29, 1964. In lieu thereof, this position was assigned to Mr. B. S. Cadle, a junior employe in the Computer Center.
- (b) Carrier shall now assign Mr. Milam to the position of Head Computer Operator, 7040-44 Computer and compensate him at the rate of that position beginning October 7, 1964, and each succeeding day thereafter until he is assigned.

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 holds a position and the Southern Railway Company.

Mr. W. L. Milam is carried on the Southern Railway System, Vice President-Staff, Atlanta, Georgia, Seniority Roster "B", with a seniority date of February 3, 1958. He is shown on the roster as holding a position of Head Computer Operator, Employees' Exhibit "A".

In the year 1956, the Southern Railway announced its intention to install a Type IBM-705 electronic data processing machine and certain auxiliary computing equipment in their General Office Building, Atlanta, Georgia.

In November of that year, two mutually acceptable, separate, Memorandum Agreements were entered into with respect to the rights of clerical employees to positions that were needed and subsequently established to operate this new equipment. Attached as Employees' Exhibits "B" and "C" are copies of these two Memorandum Agreements.

Since the initial signing of the Memorandum Agreements with respect to the rights of the employees working in the Computer Center, there has

cant. If requested, copy of all bulletins will be furnished Local Chairman.

(Exhibits not reproduced)

OPINION OF BOARD: It is contended that Carrier violated the Agreement between the parties when it assigned Mr. B. S. Cadle to the position of Head Computer Operator, 7040-44 Computer, rather than Claimant W. L. Milam, a person of greater seniority, in the Computer Center, Atlanta, Georgia.

Carrier urges that Rule 15 of the Agreement governs and that its provisions are incorporated by reference in Rule 16.

Claimant argues that Rule 16(a) should govern and that Carrier, having made the decision that Claimant's qualifications were not sufficient, has failed in supporting that decision by adequate evidence.

The issue here: was the judgement of management unsupported by evidence, and thus arbitrary, unreasonable or exercised to circumvent the Agreement? The record indicates that it was not.

Carrier has not made a mere assertion of unfitness as it did in Award 12931 (McGovern) or given tests for which no training or preparation was offered as in Awards 15002 (Zumas) and 15586 (House). In arriving at its decision Carrier conducted a training course on the operation of the 7040-44 Computer of sixteen (16) work days, more than three times the normal length of such course, with smaller than normal classes and with two instructors instead of the normal one. Participants including Claimant attended without loss of pay and at the conclusion of the course tests were administered. Participants were advised of their scores and on the basis of the scores the position was filled.

It is charged that failure of Carrier to set out in its submission the respective grades of the parties is material to support of its burden of proof, but nowhere is the statement of Carrier challenged that Claimant did not successfully complete the training course. It is nowhere alleged that Claimant passed the test or was capable of handling the more complex equipment, only that he was and is capable on the 705 Computer, a fact supported by Carrier. This hardly establishes sufficiency on the more complex new equipment within the meaning of Rule 16(a).

It is argued on behalf of Claimant that should he be given "a fair chance under friendly and cooperative conditions" that he "could become a well qualified operator in a reasonable time". However, the verb form in quoted portions of both Rule 15 and 16(a) is "being", present tense, and does not contemplate sufficiency which could or might occur at future times under certain conditions.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1969.