

Award Number 17918

Docket Number CL-18132

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6545)

- (1) The Carrier violated, and continues to violate the rules of the Clerks' Agreement when, on January 26, 1968, it denied Mrs. Janet Roling the position of Rate and Tariff Clerk C-36 in the Freight Traffic Department, General Office Building, St. Paul, Minnesota;
- (2) The Carrier shall now be required to clear Mrs. Roling's record by making appropriate notation; and
- (3) The Carrier shall now be required to place Mrs. Roling on the position of Rate and Tariff Clerk C-36, and reimburse her for any loss of compensation incurred as a result of the disqualification.

EMPLOYEES' STATEMENT OF FACTS: The position of Rate and Tariff Clerk C-36 was advertised under Bulletin 6-A dated January 4, 1968, reading as follows:

"St. Paul, Minnesota
January 4, 1968

Bulletin No. 6-A

"Posted:	January 4, 1968
Title of Position:	Rate & Tariff Clerk C-36
Daily Rate of Pay:	\$25.66
Assigned Hours of Service:	8:00 A.M. to 11:45 A.M. 12:30 P.M. to 4:45 P.M.
Five-Day Assignment:	
Meal Period:	11:45 A.M. to 12:30 P.M.
Bulletin Expires:	January 8, 1968
Major Assigned Duties:	General rate work
Duration:	Permanent
Reason for Vacancy:	Appointment of P. F. Dec to Rate & Tariff Clerk C-13, effective January 4, 1968.

**G. F. Janecky
Office Manager"**

the claimant in this case again requested and was granted leave of absence account sickness from August 19, 1968 to November 1, 1968.

The Organization has made further attempts to support its assertions by referring to out of context portions in the transcript testimony which lack foundation when the transcript of investigation is read as a whole. For example, they placed great stress on certain insignificant remarks made by Mr. McGuire on page 8 and 9, but have ignored the following important testimony on page 2:

Q. "Mr. McGuire, was it your decision to disqualify Mrs. Roling?"

A. "I have no decision to make as I didn't know she had filed on the position. I was out of town at the time."

(Exhibits Not Reproduced)

OPINION OF BOARD: Rule 7 of the applicable Agreement entitled **PROMOTION** reads as follows:

"Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to excepted positions.

"(NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

The only issue before the Board is whether the Claimant had sufficient fitness and ability to be entitled to the position of Rate and Tariff Clerk C-36. By Rule 7 the parties have agreed that only the Carrier shall be the judge of sufficient fitness and ability.

Carrier's decision denying Claimant's bid for the position may be overruled only by a showing that it grossly abused its discretion and that its action was arbitrary and capricious. There is no convincing evidence in the record to justify such a showing.

Claimant's ability is not challenged. Only her fitness to adequately carry out all of the job requirements is questioned. Among other things, the occupant of position C-36 is required to travel, to sit in on division meetings, to attend meetings with representatives of other railroads, and to "negotiate settlements, outstanding claims and statements of differences which . . . have accumulated over a period of time." While some employees, who previously occupied this position, did little or no traveling, there is no serious denial that the duties above enumerated were and have been a part of the position's job description. It was on this element of the job and Claimant's record of substantial absenteeism that Carrier concluded that the Claimant did not have sufficient fitness.

It is true that one element considered by the Carrier was Claimant's sex. But the record shows that this was not the sole criteria. Other and more important factors were considered. She was not rejected solely because she

was a woman. This Board, under all of the circumstances in this case, has no right to substitute its judgment for that of the Carrier.

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.

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 12th day of May 1970.