



Award No. 18286
Docket No. CL-18601

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6752) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly Rules 2-A-3 (a) and (b), 2-A-9, 6, 7, 9-A-1, 9-A-2, among others, when it deliberately disqualified Clerk H. Montgomery unjustly and unfairly on April 15, 1969 and forced her "Under Protest" to revert to the Extra List.

2. The Carrier shall pay Clerk Helen Montgomery (having approximately 27 years of service) a day's pay for each day that she was unfairly and unjustly removed from her regular assigned position, and also an additional day's pay for each day she is required to work another position, "Under Protest" effective April 16, 1969 and each day thereafter until such time as the violations are corrected and Clerk Montgomery is reinstated to her rightfully owned and regular assigned position and the application of the above rules are complied with by the Carrier.

OPINION OF BOARD: By appropriate notice under the provisions of Article II, Section 1(a) of the Attrition Agreement of April 1, 1964, the Director of Personnel Relations directed a letter, under date of December 10, 1968, to the General Chairman, advising that two positions would be abolished, effective at the close of business March 9, 1969. One of the abolished positions was held by Claimant. She exercised her seniority to Position MPR-13 in the same department, duties of which included some similar to those which she had previously performed.

Under date of April 14, 1967, Manager, Passenger Revenue Accounting addressed the following to Claimant:

"On March 11, 1969, you exercised your seniority and displaced the clerk who was the incumbent of position MPR-13. Since that

date, I have cooperated with you so that you could qualify on this position.

However, a review of your performance indicates that you have not qualified for this job and, therefore, you have forced me to disqualify you as of the close of business April 15, 1969."

By letter dated April 15, 1969, Manager, Passenger Revenue Accounting informed the General Chairman:

"On April 15, 1969, we disqualified Mrs. H. Montgomery from the clerical position MPR-13. A copy of our letter to Mrs. Montgomery is attached.

A review of the work performed by this clerk indicates that her performance has been unsatisfactory. Since March 11, 1969 she has been absent nine out of twenty-three working days, or 39% of the time, which is consistent with her absentee record of 40.5% over the previous four years.

In addition, she has not been capable of performing the reasonable day's work which is expected of any clerk performing the particular tasks assigned to them."

Claimant, on April 15, 1969, wrote to Director, Accounting:

"I, Helen Montgomery, after twenty seven (27) years of service with the Long Island Rail Road Company, have been removed maliciously, unwillingly and without just cause from my position in the Auditor, Passenger Revenue Department.

I am hereby taking a position as an extra clerk under protest.

I wish to go on record at this time as stating that the Carrier has illegally, without proof, and without justification, violated my rights under the clerical agreement by disqualifying me without proper proof as to my inability to perform the duties of my position in the Auditor, Passenger Revenue Department.

I repeat, I am — under protest — against my will — and against the clerks' agreement — assuming the position of extra clerk."

The issue in this case is whether Claimant was qualified to hold Position MPR-13.

Rule 2(b) of the Agreement reads:

"(b) When it is evident that an employee will not qualify for a position, he may be removed from the position before the expiration of thirty (30) days. The General Chairman will be notified in writing, the reason for the disqualification."

The determination of an employee's qualification for a position is initially reserved to Carrier. Should Petitioner challenge a Carrier's find-

ing of disqualification, to prevail, it has the burden of proving by factual evidence of probative value that the affected employe did possess the necessary qualifications and had performed them within normally acceptable standards. In the record before us Petitioner has failed to satisfy that burden. We, consequently, are compelled to dismiss the Claim for failure of proof.

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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1970.