



Award No. 18463

Docket No. CL-18713

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6761) that:

1. The Carrier violated the Clerks' Agreement when it awarded the position of Console Operator to Mr. Anhalt as the successful bidder of same.

2. The Carrier shall now compensate Mary Thomas for any and all resulting wage losses sustained, or the difference what she would have been paid for so working Position #344 and what she was paid for working as she did for the period beginning January 21, 1969 and for as long as the violation continues, or until such time as corrective measures are applied, plus the overtime rate for each Saturday and Sunday required to work, which normally under the Agreement would have been her assigned rest days, as well as interest payment at the current rate, on the amount of reparations due, with the understanding, that the reparations due will be based on the rate of \$35.34 per day, or the rate of pay which may eventually be agreed upon, rather than the bulletined rate of \$28.50 per day, which was unilaterally and arbitrarily imposed for this position.

3. That the Employee's claim as set forth in Section 1 and 2 hereof was presented to the Carrier's Director of Personnel, Mr. C. M. Crawford, on March 26, 1969 and was never specifically declined or disallowed and as a consequence thereof, the Carrier did not meet its obligations as set forth in Section (a) of Article V of the August 21, 1954 Agreement and therefore, the Claim must be allowed as presented.

EMPLOYEES' STATEMENT OF FACTS: The Carrier, at its Clearing, Illinois facility, maintains an IBM Machine Room that was established by Agreement in 1955. The function of the Machine Room was to perform on machines work which was performed manually or semi-manually.

In December of 1968 the carrier established the position of console operator. Employees were again notified at this time that, among other things, the carrier required a satisfactory score on the IBM aptitude test. Without any protest and being aware of her first failing score, the claimant and fourteen other employees were re-tested. Claimant again failed to make an acceptable score. The second test score was 24, a letter grade of D minus.

Petitioner has at no time questioned or challenged the validation, administration or scoring of the IBM test or any reason why carrier did not assign her to the position of console operator.

The carrier has completely complied with the rules of the current agreement when it established the position in question, and in the assignment to the position. Clearly, it is Rule 8 of the Agreement which covers the situation before us, and when carrier bulletined the position under Rule 9, and established the rate of pay under Rule 59, it fully complied with the Clerks' Agreement.

Rule 59 reads, as follows:

NEW POSITIONS

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class where created."

There were no similar positions on the property prior to the establishment of the Computer Center. Therefore, carrier made a survey of similar positions on a number of Chicago-based railroads. The rate of \$29.50 established on the console operator's position and on the Assistant's job rated at \$28.50 per day is in conformity with the applicable agreement Rule 59. Further, Rule 23 provides that a change in a rate shall constitute a new position unless otherwise agreed between the management and the General Chairman. In accordance with this rule, the only time an agreement is necessary to change a rate is if it is not intended to become a new position. Incorporated in the 1964 Agreement revision was Rule 60, which provides that a list of positions and rates of pay will be furnished to the General Chairman as of January 1 of each year. No such lists would be necessary if the rules required an agreement on each new rate and Rule 67 provides for the adjustment of rates.

There is no rule to be found in the Clerks' Agreement which prohibits or restricts the carrier from determining an applicant's "fitness and ability" by means, as here, with a validated aptitude test.

OPINION OF BOARD: The issue, the parties to the dispute, and the applicable Rules, are identical to those involved in Award No. 18462. Only the name of the Claimant and position in question are different. The precise issue to be determined is whether Carrier acted in an arbitrary, capricious, and unreasonable manner, by appointing another individual junior to Claimant to the position of Assistant Console Operator. We cannot say, after a review of the record, that Carrier has acted in that manner. Therefore, for the reasons stated in Award No. 18462, we will deny the claim.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.