

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

CESAR MENDES

REA EXPRESS, INC.

STATEMENT OF CLAIM: My case concerns promotional rights within the same Department of the Computer Operations. According to Rule 3(a) and (i) of our controlling Agreement seniority rights is the **prime** consideration for promotion and paragraph (i) entitles us to thirty-working days to prove fitness and ability to qualify for promotion.

No written test is mentioned in the Agreement. This simple Rule 3 of our Agreement was violated seven times.

Each and everytime I have had the opportunity to bid into a better paying job in Computer Operations, I have been denied the chance to do so and have been barred from working the job for the stipulated thirty-working days trial period to prove that I could qualify. Very simply, my right of seniority is being ignored. The Agreement states that seniority is the **prime** consideration for promotion and according to the Webster dictionary prime means first and not second.

Why is the Manager predetermining my ability to fill the job * * * and depriving me of the chance to prove that I can handle the job? I was a 650 computer operator and it does not make any sense to have to make an inadequate test (according to IBM Headquarters) everytime a new computer comes to the office. In the meantime, Management has made the Computer Operations jobs classification excepted so they can handpick whomever they wish. (Violation of rule 1(b)).

Employees with less seniority than I were awarded the classified and bulletined computer operator positions.

The Manager got away with this violation by using a **bad trick** of not turning page 6 to paragraph (i) on page 8 of the Agreement. Paragraph (i) states that fitness and ability is subject to thirty-working days. According to any dictionary the word subject means "dependent upon" or "under the control of".

By not turning the page at the right time, the Manager ignored the meaning of the word subject and I was required to prove fitness and ability twice.

Management had no right to take away my seniority rights and to change or alter rule 3 and working conditions because it is a violation of Section 2. Seventh and Section 6 of the Railway Labor Act. It is obvious that Management handled my case in a discriminatory, capricious and arbitrary way.

OPINION OF BOARD: Claimant is employed as a Key Punch Operator in REA Express' Finance Department in New York City. He has been employed by REA since 1954, working in various clerical capacities, as an IBM Machine Operator, and presently as a Key Punch Operator.

On several occasions Claimant bid on the position of Computer Operator. The incumbent of this position works on a 360/40 IBM Computer. In accordance with the practice applied to all employees who bid on Computer Operator positions, Claimant was given an IBM aptitude test each time he bid. On several different occasions he took the aptitude test and each time he failed the test. The passing grade was 46% and his scores were 23%, 28%, 40%, 21%, 29%, 38% and 18%. The tests were graded by mechanical means by the use of a template. Since Claimant had demonstrated that he lacked "fitness and ability" for the Computer Operator position, his bids were rejected in accordance with the provisions of Rule 3 (a) and (i) of the Agreement.

In numerous awards of this Board, we have held that the determination of an employee's "fitness and ability" is reserved to Carrier. Claimant has failed to introduce any evidence that he possessed, at the time he bid on the position, the indispensable condition precedent of "fitness and ability" to qualify him to perform the prescribed function of the position of Computer Operator. (Awards 16471, 17948, 18347, 18353, 18462, among many others.)

We have further held that Carrier may use examinations or tests as determinative of "fitness and ability." (Awards 12461, 15493, 15626, 17192, 18462, among others.)

REA did not improperly predetermine Claimant's ability as he contends. Rather, REA used an objective standard, namely, an IBM aptitude test, in order to determine if Claimant had sufficient "fitness and ability" to handle a computer operator position. Although Claimant has alleged that the test Carrier used was not valid, the evidence in the record with probative value does not prove that contention.

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 8th day of October 1971.