

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, 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-6901) that:

1. The Carrier violated the Clerks' Agreement when it awarded Console Operator Position #345 to Mr. Kimpel.
2. The Carrier further violated the Clerks' Agreement when it awarded Console Operator Position #344 to Mr. H. Lymore.
3. The Carrier shall now compensate Mrs. R. Krueger for any and resulting wage losses sustained, or the difference what she would have been paid for so working Position #344 or 345 and what she was paid for working as she did for the period beginning November 11, 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 (plus subsequent wage increases) or the rate of pay which may eventually be agreed upon rather than the bulletined rate of \$29.36 per day, which was unilaterally and arbitrarily imposed for this position.

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 machine work which was performed manually or semi-manually.

The work force in the Machine Room consisted of some eighteen (18) established machine operator positions. The incumbents of such positions were used to perform work on any machine in the Machine Room. The duties assigned to the machine operators consisted of operating all punchcard equipment and machines printing records and reports there from, such as the collator, reproducer, printer, sorter, etc.

On or about the effective date of this dispute, the Carrier installed an IBM Computer Model 360 and its associated devices using IBM Disc Operating

success of a person with lower scores are much less. While it is, of course, necessary to choose employees who have a high probability of learning computer work, it is also necessary to choose those for training who will be most likely to succeed on the job at a later date. The validation studies made by IBM indicate that the test scores are positively related to job performance in this field.

Beginning in January of 1968, the Carrier invited all of its employees to take this aptitude test. The Carrier administered the test to one hundred and forty-six (146) employees. All tests were mailed to the IBM Corporation, 100 South Wacker Drive, Chicago, for grading. Claimant, Mrs. R. Krueger, made an examination score of 16, or a letter grade of D.

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, the claimant and several other employees were re-tested. Claimant again failed to make an acceptable score. The second test was D-21.

Petitioner did not question or challenge the validation, administration or scoring of the IBM test, nor the score which the claimant failed to attain to warrant Carrier assigning her to the position of assistant console operator.

The Carrier has completely complied with the rules of the current agreement when it established the position of assistant console operator. 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."

The rate currently paid to the assistant console operator was properly established in accordance with the current agreement. The rate was established in accordance with the rate determined for the console operator position. (See Third Division Dockets CL-18713 and CL-18697 now pending.)

There is no rule to be found in the Clerks' Agreement which provides a payment of "interest" on claims, which the Employees are here seeking.

Further, there is no rule which prohibits or restricts the Carrier from determining an applicant's "fitness and ability" by means of tests, or otherwise.

OPINION OF BOARD: The issue raised in this case has been put before this Board before in Docket Numbers CL-18713 (Award 18463) and CL-18697 (Award 18462). Here as in those cases the issue is whether the Carrier violated the agreement by awarding a position to one junior in seniority to Claimant based upon the results of an aptitude test prepared by IBM, the manufacturer of the equipment to be utilized by the holder of the position in question. The test was used to determine fitness and ability in accordance with Rule 8 of the Agreement.

There has been no showing that the action of the Carrier in utilizing these tests acted arbitrarily or capriciously. The Petitioner has not supported its contention that the test was not sufficiently job related.

We think the reasoning in Award 18462 is sound and will follow it.

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 10th day of December 1971.