

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19762  
Docket Number CL-19732

Frederick R. Blackwell, Referee

(Brotherhood of Railway and Steamship Clerks, Freight  
( Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Western Maryland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7131)  
that:

1. Carrier violated the rules of the agreement when it arbitrarily, unilaterally, disqualified H. A. Fouche from the position of Clerk-Typist without affording him an opportunity to qualify and that

2. Clerk H. A. Fouche shall now be allowed the difference in the rate of pay between the position he presently occupies (Assistant Trace Clerk) and that of Clerk Typist.

OPINION OF BOARD: This claim relates to Rules 10 and 16 which provide, inter alia, that displacements shall be based on "seniority, fitness, and ability". These rules also contain provisions concerning a 30-day trial period for qualifying on a position, but the claimant herein was disqualified without a trial period having occurred.

Claimant has a seniority date of February 6, 1965. Prior to this dispute he had worked in the Office of Superintendent of Transportation for about three years in the positions of Assistant Trace Clerk and Mail Clerk. Earlier he had worked as Extra Yard Clerk (January 29, 1965) and Relief Clerk (September 29, 1965). One or both of these positions included typing duties.

On January 15, 1971, the claimant's position of Mail Clerk, in the Office of Superintendent of Transportation, was abolished. Claimant then attempted to displace on three positions: Clerk-Typist, Clerk Stenographer, and Relief Clerk. His displacement notice on the Clerk-Typist position was submitted on January 27, 1971. After a meeting with claimant and two union protective Committeemen on January 28, 1971, the Superintendent of Transportation notified claimant on January 29 that he was not qualified for the Clerk-Typist position. Claimant then submitted displacement applications on the Clerk Stenographer and Relief Clerk positions, but was notified he was not considered qualified for these positions either. He then bid for and was awarded the position of Assistant Trace Clerk, Office Superintendent of Transportation.

The Clerk-Typist position was described as follow in a bulletin dated November 28, 1969:

"Duties consist of handling all files and maintaining a complete and **accurate** record of files kept in File Rooms; maintaining file of daily operating reports; typing; assisting with Statistical and other Transportation Office work. The duties of this position require a person to **be** experienced in typing and the use of **comptometer**."

Petitioner contends that claimant's previous work on positions involving duties similar to the duties of the Clerk-Typist position shows that claimant would have qualified for the Clerk-Typist position had he been given the opportunity to work the position. Carrier's position is that its evaluation of claimant's three years of tenure as Mail Clerk and Assistant Trace Clerk, in the Office of Superintendent of Transportation, afforded a **proper** and adequate basis for its disqualification decision and, hence, a trial period was not warranted.

The general criteria which are applicable in this dispute **were** succinctly stated in Award No. 11768 (**Engelstein**). These criteria are "... that management has the initial responsibility for determining qualifications for particular positions, that management cannot be arbitrary and unreasonable, and that if management decides that the applicant's qualifications are not **satisfactory**, the **employee must** show that he is qualified." The **employee's** showing of qualification need not be established beyond a reasonable doubt, Award No. 10424 (**Dolnick**). But the showing must be such as "to raise a reasonable probability that he would be able to perform all the duties of the position within a reasonable time". Award Nos. **5348(Robertson)** and 8197 (**Wolff**). Here, Carrier has exercised its initial responsibility by rendering its judgment that claimant was not qualified. Thus, the narrow issue raised by the record is whether Petitioner's evidence establishes the requisite "reasonable probability".

The record contains argument and counter-argument on the particulars of Carrier's decision to disqualify claimant. These particulars relate to such matters **as** claimant's vision condition which requires him to **use** a magnifying glass in much of his work, his inability to perform "close work" on Train crews' time tickets which involve detailed computations of time, his lack of knowledge of a complex filing system, etc. In the Petitioner's Rebuttal Brief these particulars are discussed and analyzed, in **some** instances with **some** effect. In the overall context, however, Petitioner must do more than invalidate some of these particulars by argument; Petitioner must make a showing that claimant possessed qualifications of such a kind and level that Carrier should have given him a trial period on the Clerk-Typist position. Thus, we must examine Petitioner's evidence concerning claimant's work on prior positions, albeit this is the same evidence on which Carrier bases its disqualification decision, for it is only by and from evidence that the **requisite** reasonable probability can be established.

The significance of claimant's prior work, as put by the Petitioner, is that "... these jobs previously occupied by him on the property raise a reasonable probability that he would be able to perform all the duties of the position within a reasonable time." and, further, that such jobs provide "... clear and ample evidence that Claimant has been awarded similar type positions in other departments and evidently had worked them to the satisfaction of the Carrier ...". The fact of "similarity" is the touchstone of this argument and, accordingly, we have carefully examined the prior positions with this in mind. However, as reflected by the record, the asserted similarity between the duties of claimant's prior positions and the duties of the Clerk-Typist position is nebulous and so slight as to be virtually meaningless. Certainly there is not such similarity that performance of the prior positions raises a reasonable probability of the ability to perform the Clerk-Typist position. The duty of typing seems to be the one major duty which claimant had performed with some consistency throughout his work with Carrier, but, even here, the record clearly suggests that the Clerk-Typist position calls for a greater typing proficiency than was required by claimant's prior positions. Moreover, although Petitioner asserts that claimant's typing ability was the main reason for his disqualification, the record shows that a number of duties was involved in Carrier's disqualification decision, including typing. Comptometer work was also involved, to the extent of 20 hours of such work monthly. On this issue the November 1969 bulletin on the Clerk-Typist position states that "The duties of the position require a person experienced in . . . the use of comptometer." Carrier's Submission stressed the importance of this duty and asserted that it would have to be transferred elsewhere if claimant was placed in the position, Petitioner's answer to this is set forth in its Rebuttal Brief as follows:

"... Carrier at no time on the property insisted on claimant demonstrating his ability to operate a comptometer. The record reveals from the Carrier no attempt to ascertain his ability in this matter ... the claimant, prior to this employment with this company, worked for the Pangborn Corporation, Hagerstown, Maryland, and in his occupation as a Clerk, operated a comptometer." (Emphasis supplied)

Though the underscored statement is the sole information or evidence offered on claimant's behalf in respect to the comptometer issue, the statement is silent on at least two important facts. The statement says nothing about whether the prior comptometer work was a casual or significant duty of claimant's work during his tenure with Pangborn, nor does it say anything about the proficiency with which he operated a comptometer. Thus, the statement falls short of establishing a reasonable probability that claimant could perform the comptometer part of the Clerk-Typist position within a reasonable time.

Finally, it is also significant that claimant's three most recent years of work with Carrier was in the Office of the Superintendent of Transportation, the same office in which the Clerk-Typist position is situated. This enabled the supervisory authority of that office, with its knowledge of the duties of claimant's prior positions, and his performance thereof, to evaluate claimant's prior work in relationship to his ability or inability to perform the duties of the Clerk-Typist position. Consequently, we believe Carrier had before it an adequate body of information on which to base a reasonable judgment. And although Petitioner has presented some evidence indicating that claimant has carried out a variety of duties in his work on prior positions with Carrier, the Petitioner's evidence, when viewed in its most favorable light, is not sufficient to establish the requisite reasonable probability or to warrant a finding that Carrier's action was arbitrary or capricious.

In view of the foregoing we shall dismiss 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 Employee involved in this dispute are respectively Carrier and Employee 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

The claim is dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. A. Kilburn  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.