

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20658
Docket Number CL-20657

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7518) that:

1. Carrier violated **Rules** 4, 7 and related rules of the Clerks' Agreement when it arbitrarily **and** capriciously refused to assign Mrs. Myrtle L. Baker to the position of Junior Bill Clerk No. 323 in lieu of a **junior employe** in the office of Manager Disbursements Accounting, St. Louis, Missouri (Carrier's File 205-4738)

2. Carrier shall now be required to **compensate** Mrs. Myrtle L. Baker for the difference in rate of pay, \$1.08 per day, plus any general wage increases, beginning Monday, November 20, 1972, and continuing for each subsequent work day, Monday through Friday, until the violation is corrected by assigning Mrs. Baker to the position of Junior Bill Clerk Job No. 323.

OPINION OF BOARD: When Carrier advertised the position of Junior Bill Clerk, **Claimant**, (a Statistical Clerk), made application, but it was assigned to another employee, even though Claimant was senior to the successful applicant. Claimant requested specific and precise reasons for Carrier's denial of the promotion.

Carrier asserts that Claimant was "**...not** qualified to satisfactorily perform the duties of that position" and has made repeated reference to the fact that Claimant only scored **38½ (passing** grade 68) on a test given to her to **determine** her knowledge of the work in question. The record, as developed on the property, fails to disclose the specific contents of the test, nor does the record indicate that the successful applicant took a similar test.

We do not dispute Carrier's contention that tests **may** properly be used to determine qualification of applicants. But, as we study the Awards cited by Carrier in this regard, we conclude that the tests in question must be considered in light of all facts **of** record, and the Board **must** assure that the contents of the test are reasonably related to the question of qualification under review. See, for example, Award 15002:

"It is clear that Carrier has the right to administer tests to determine whether or not an employee is qualified for a position.

It is equally clear that such tests must be such to allow reasonable men to conclude that the results are sufficient indication or proof of qualification or disqualification."

Moreover, we concur with the Awards cited by Carrier which hold that when a Carrier makes a determination that an employee is not qualified, the burden shifts to the employee to **demonstrate** to the contrary. Accordingly, a close scrutiny of the record, as handled on the property, is appropriate to determine if Claimant has satisfied the above stated burden.

Rule 4(a) provides:

"(a) **Employes** covered by these rules shall be in line for promotion. Promotion, assignments and displacements under these rules shall be based on seniority, fitness and ability: fitness and ability being sufficient, seniority shall prevail.

NOTE I: The word "Sufficient" is intended to more clearly establish the prior rights of the senior of two or more **employes** of the same seniority district having adequate fitness and ability for the position or vacancy sought in the **exercise** of seniority."

In addition to **listing** the duties of the position, the advertising bulletin stated:

QUALIFICATIONS:

'Applicant should be familiar with ICC Uniform System of Accounts and must have one year of Disbursements Accounting Experience.'

In response to Claimant's request for "...**specific** and precise reason for being denied the position...", Carrier cited the "**QUALIFICATIONS**" (noted above) and advised that "...**you** did not have the training and experience specified on the job bulletin." Carrier also noted that Claimant's test **score** was **38½**.

Carrier's response prompted the instant claim; which asserted that the job of Junior Bill Clerk is, essentially, a training job to aid in qualifying employees for the jobs of Senior Bill Clerks. Moreover, the claim asserted that Claimant had **more** than one year **of** experience in the Disbursements Accounting Department and is somewhat familiar with ICC Uniform System of Accounts. Carrier continued to assert that Claimant did not possess sufficient fitness and ability to perform the duties.

The Organization continued, on the property, to assert that Claimant should have been promoted, and on November 16, 1973 stated to Carrier:

"In addition to that said **above**, you were advised that Mrs. Baker did have one year or more of experience in the Disbursements Accounting Office and that she did have some knowledge of the I.C.C. Uniform System of Accounts. In addition thereto, you **were** advised that the Junior Bill **Clerk jobs** in that department were, in effect, training jobs to assist **employes** in training for Senior Bill Clerk positions."

On **November** 27, 1973, Carrier replied to the November 16, 1973 letter, and failed to dispute the above-cited recitation. On December 11, 1973, Carrier again corresponded with the General Chairman, but no **comment** was made concerning the cited recitation, although Carrier did refer to the test results.

It is difficult, indeed, to assess an individual's qualifications when one is confined to a review of a cold record; limited to only those matters considered on the property. We note that Rule 4(a) and its NOTE I do not suggest that Claimant and the successful bidder are to be "compared" concerning fitness and ability. Rather, if the senior applicant has "sufficient" fitness and ability, he or she shall prevail, regardless of the degree **of** capability **demonstrated** by a junior employee.

As we review Carrier's contention (as raised on the property) it is conclusionary in nature. Although Carrier asserted that Claimant did not possess sufficient fitness and ability, it did not specify the basis for its conclusion, other than repeated references to the **test score**. **More-**wet, we feel that the reference to the test score is also conclusionary. Although there is some limited suggestion that the test was related to job content, we do not have before us sufficient information upon which we can intelligently evaluate the pertinence of the test. In short, we are aware that Carrier concluded that Claimant was not qualified, but we are not aware of the factual basis for that conclusion, nor do we have adequate information to fully evaluate Carrier's conclusion.

While conclusions of lack of fitness and ability may be sufficient to rest the burden upon Claimant, **we** feel that she has satisfied that requirement. We have considered the "Qualifications" for the position, cited above. The assertion contained in the November **16**, 1973 letter (also cited above) suggests to us that Claimant met those limited qualifications. Carrier failed to deny the assertion although it had opportunity to do so. Accordingly, we **conclude** that Claimant has demonstrated sufficient fitness and ability, and that **Rule 4** was violated.

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 Agreement was violated.

A W A R D

Claim (1) sustained to the extent of a finding of a violation of **Rule 4**.

Claim (2) is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third Division**

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, **Illinois**, this **21st** day of March 1975.