

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DMSIOR

Award Number 20694

Docket Number CL-20730

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight **Handlers, Express** and
(Station **Employees**
(
(The Detroit and Toledo Shore Line **Railroad Company**

STATEMENT OF CLAIM: Claim of the **System** Committee of the **Brotherhood**,
(**GL-7556**)that:

1. The Carrier violated the effective Clerks' Agreement when it failed and refused to recognize the Seniority of Clerk Lucille **Smalarz** when she was the senior applicant for Relief Clerk **No. 1, Trenton, Michigan**, and **was** denied said position.

2. The Carrier shall now be **required** to compensate Clerk Lucille **Smalarz** for eight (8) **hours'** pay at the pro rata rate of Relief Clerk **No. 1, Trenton, Michigan** for December 14, **1972** and for each and every **day** thereafter, **5 days** per week, **Tuesday** through **Saturday**, that she is denied the right to **fill** this position.

OPINION OF BOARD: **Claimant** herein was disqualified by Carrier in her otherwise proper bid for a position which involved, as one of its duties, driving a company vehicle. Claimant, with some twenty **nine** years of seniority, bid on a position and **was** disqualified solely because of an alleged **physical** disability.

Petitioner **insists** that **Claimant** had a valid driver's license, had suffered no problems in the preceding **year** and Carrier was obliged to **assign** her to the position to which she was entitled by seniority. It **is** undisputed that one of the requirements of the position in question **involved driving a company** vehicle over both **state** and **interstate highways**.

Carrier asserts that it **is not** obligated to **assign an employe** to a position, by virtue of seniority, to duties which the employe is not **physically** capable and **fit** to perform. The **Carrier's** position has merit. **None** of the rules cited by Petitioner or its **arguments can** overcome the proof of record that the Claimant does not have the fitness required to fill the position to which she aspires. The record reveals **admissions** on several **occasions by both** Claimant and her **husband** that she **was** subject to fainting and "black outs", and that on one **occasion** she did faint while on duty in **Carrier's** Detroit office. The report of Claimant's personal physician that she **was** normal and physically able to work does not **overcome** the admitted long history of repetitive fainting spells since

her teenage years. Carrier's Medical Department found that her general physical condition was satisfactory but that "In view **of her** long history of repetitive fainting spells, **Mrs. Smalarz was** not thought fit to drive a Company vehicle and **was,** thus, disqualified **for** that activity."

Carrier has substantial responsibility for the safety **of it** own **employees** as well as the public. This **Board** cannot overturn Carrier's decision that there would be an ever-present danger to Claimant and other⁸ if she were permitted to occupy a **position** which required driving a vehicle in the perfo-ce of her duties. The **Claim must be** denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and **all** the evidence, **finds** and holds:

That the parties valved 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

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at **Chicago, Illinois,** this 17th **day** of April 1975.