

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20787  
Docket Number CL-20729

Francis X. Quinn, 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-7565) that:

1. Carrier violated **Rules** 7, 16 and related rules of the Clerks' Agreement when it arbitrarily and capriciously refused to assign Mrs. Jo Ann Eiben to the position of Typist - Dictaphone Operator No. 501, in lieu of junior **employee**, in the office of General Freight Claim Agent, Palestine, Texas (Carrier's File 280-752).

2. Carrier shall now be required to compensate **Mrs. Eiben** eight hours' pay at the rate applicable to the position of Typist-Dictaphone Operator No. 501, beginning Wednesday, January 24, 1973, and continuing each subsequent work day, Monday through Friday, in addition to any other compensation earned or received, until the violation is corrected by assigning Mrs. Eiben to the aforementioned position.

**OPINION OF BOARD:** This Board has consistently held that it is the Carrier's prerogative to determine the fitness and ability of its **employees** for positions and that the Carrier is not obligated to give an employee a trial on a position when it is obvious that he/she is lacking in the necessary qualifications.

A solution to the problem raised by the parties was **adequately** dealt with by Emergency Board 186 when it addressed itself to the need of developing a retraining program: "Since it is always more costly, personally, socially and economically to maintain people in idleness, an active affirmative job stabilization and retraining policy **committee** should meet regularly with specific action objectives." Such a program would enable **employees** to develop necessary **qualifications**.

**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;

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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. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 3Lst day of July 1975.

DISSENT OF LABOR MEMBER  
IN AWARDS 20787 and 20788 (Dockets CL-20729  
and CL-20768 - Referee Quinn)

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It is inconceivable that the majority herein would revert to language of an Emergency Board established under Section 10 of the Railway Labor Act, as amended, to deny a claim of an employe(s) submitted to the Adjustment Board under Section 3 of the Railway Labor Act, as amended.

The claimant(s) herein did set forth a full statement of the facts and all supporting data bearing upon the dispute(s). Such facts apparently have been completely ignored by the majority; since in lieu of rendering a decision based thereon, a portion of an Emergency Board report is quoted in defense of the denial awards. It is to be noted that the Emergency Board report is a recommendation which concerns a particular dispute and that dispute only--a dispute which was never mentioned or raised during the handling by the parties; which to this date has not resulted in an Agreement; and which, moreover, deals with job stabilization and retraining and has no bearing on the dispute(s) here. Further, it is evident that the rights of the claimant(s) under an Agreement which has been in effect for years (specifically, Rules 4 and 7, which entitle the employe(s) to promotion and 30 days in which to qualify), have been denied.

These Awards are in palpable error, and the majority have evaded the responsibility of this Board to apply the clear provisions of the Agreement. In view thereof, I dissent.

  
Gerald Toppen  
Labor Member

August 28, 1975

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