

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20880  
Docket Number CL-20877

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
PARTIES TO DISPUTE: (  
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
(GL-7662) that:

The Carrier violated, and continues to violate, the rules of  
the Clerks' Agreement when it denied Leonard E. Hoekendorf the position  
of Revisor No. 214 in the Freight Claim Department, Chicago, Illinois.

2. The Carrier shall now be required to place Mr. Hoekendorf on  
position of Revisor No. 214 and reimburse him for loss of compensation at  
\$2.66 per day, **commencing** July 2, 1973, and continuing until placed on posi-  
tion of Revisor No. 214.

OPINION OF BOARD: **Claimant** was employed by Carrier on October 27, 1936.  
Thereafter, he received a number of promotions; the last  
of which being to Interline Rechecker on July 21, 1969.

On May 21, 1973, Claimant was advised that his position would be  
abolished effective June 29, 1973, and that he was free to exercise his  
seniority. On May 29, 1973, Claimant advised Carrier that he desired to  
exercise his seniority rights to position as "Revisor #214." On the next  
day, he was notified that: "Under provisions of **Rule** 7 your application for  
displacement is rejected." On the same date, Claimant requested a hearing  
under **Rule** 58 (unjust treatment) - **which** was conducted on July 12, 1973.  
On July 31, 1973, after review of the transcript of investigation, Carrier  
advised Claimant that he did not have the fitness and ability necessary to  
enable him to be assigned to the position of Revisor #214; which advice  
prompted this claim.

**From** our review of the entire record, we conclude that the **same**  
basic contentions set forth herein were presented to us in Award No. 20878,  
and that the same considerations which prompted our Award in that dispute  
control the outcome of this case. Accordingly, for the reasons set forth  
in our Award No. 20878, we will deny this **claim**.

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**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** Carder 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:

G.W. Paulose  
Executive Secretary

Dated at **Chicago**, Illinois, this 26th day of **November** 1975.

LABOR MEMBER'S DISSENT TO  
AWARD 20878 (Docket CL-20874)  
AWARD 20879 (Docket CL-20875)  
AWARD 20880 (Docket CL-20877)  
AWARD 20881 (Docket CL-20878)  
**REFEREE SICKLES**

In reviewing what is set out in Award 20878 together with the other awards dealing with the same subject matter, that is, Awards 20879, 20880, and 20881, one is at a loss as to how the majority of the Board can conclude, based on all the facts and circumstances which were presented, that carrier's action was such whereby it could not be set aside and the claims should not be sustained.

While one must recognize, that if all four claimants were permitted to displace experienced revisors at the same time, it could have led to some rather disquieting results, it is nevertheless evident that based on all the facts and circumstances which permitted the claimants to exercise the rights to which they were entitled under the agreement, together with the fact that all the claimants had numerous years of service and demonstrated their ability to properly perform in their prior assignments, based on the provisions of the agreement governing carrier's action was biased, arbitrary, capricious, and grossly abusive. This is especially due to the fact that the positions in question were not "exempted" as the carrier officials desired they be treated and it is evident that in this particular instance all the claimants did not have the potential to be able to perform the duties of the positions within a reasonable time and by no stretch of the imagination was carrier's action such that it could not be set aside.

Award 20878, along with 20879, 20880, and 20881 are palpably in error and all require dissent.

  
Gerald Toppen  
Labor Member

12-23-75