

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21009
Docket Number CL-21172

Frederick R. Blackwell, Referee

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

PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, GL-7899, that:

1. Carrier violated, and continues to violate, the parties' Agreement when **it** refused to award the position of Assistant Accountant to Miss Myrne A. Campbell in accordance with her seniority and the rules of the Agreement .

2. Carrier shall be required to assign **employee** Myrne A. Campbell to Assistant Accountant position.

3. Carrier shall be required to compensate **employee** Myrne A. Campbell the difference in rate of pay of Position Assistant Accountant and that of the position assigned for each workday retroactive to July 1, 1974 and for all subsequent days until the violation is corrected.

4.. Carrier shall be required to pay seven percent (7%) interest compounded annually on such difference in rate until Claimant is made whole.

OPINION OF BOARD: In June 1974 the Claimant was the **senior** bidder on the position of Assistant Accountant, Accounting Department, General Office, but the Carrier declined to place her in the position on the ground that her qualifications were not sufficient to work the position. The Employees assert that the Carrier's action violated the applicable Agreement, Rule 4, which provides that where an **employee's** qualifications are "sufficient", seniority will govern the filling of a bulletined position.

Rule 4 is the type of Rule under which the Employees have the burden to prove by a preponderance of the evidence that an **employee's** qualifications for a position are "sufficient" when, as in the instant case, the Carrier challenges such **qualifications** as insufficient. Here, the Employees' evidence is that the Claimant **worked** the position from August 1963 through June 1965, at which time she left the position due to illness. On June 24, the end of the bulletin period, after the Claimant had declined management's request that she withdraw her bid for the position, she was advised that her application was being rejected for lack of sufficient qualifications. The reasons for the Carrier's decision are reflected in a June 25, 1974 letter written by Mr. W. H. **Dooley, Sr.**, Assistant Secretary-Treasurer, who was the Claimant's **immediate** supervisor when she previously worked the disputed position. The letter states as follows:

"From my experience with Miss Campbell's work as Assistant Accountant during the period August 1963 through June 1965, I feel that she is not qualified to perform the duties of this position in the best interest of the Railroad.

This job requires a person who will, on occasion, have to complete all of the necessary accounting work pertaining to the Railroad and Bridge accounts, and must complete the monthly reports on schedule and, in the absence of the Manager-Accounting Department, the Assistant Accountant should be capable of making decisions and fulfilling any requirements of the **Management**. Since Miss Campbell has not previously demonstrated the interest and initiative to qualify for a position of this importance, I **recommend** that she not be awarded this **position**."

The issue raised by the foregoing is whether the Employees' carried the burden of proof imposed by Rule 4. The Employees' proffer to meet this burden consisted of the fact that the Claimant had previously worked the position for almost two years without having been disqualified therefrom. The fact of such prior work and that no formal proceeding was brought to disqualify the Claimant from such work made out a prima facie case in behalf of Claimant's qualifications. However, a prima facie case will suffice only until contradicted or overcome by other evidence. Mr. Dooley said in effect that the Claimant had not been qualified for the position even when she worked it previously. Mr. Dooley, being the immediate supervisor of the Claimant during her prior work on **the** position, and having direct knowledge of her day to day performance of the **duties** of the position, was in a position to **offer** a competent and reliable opinion **on** the nature of her qualifications. His statement was therefore sufficient to rebut the Claimant's prima facie case. No additional evidence was forthcoming to overcome this rebuttal evidence and accordingly it cannot be said that the burden of proof necessary to support the claim has been met. The claim will be dismissed.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulose*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of March 1976.