

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 21412
Docket Number CL-21104

James C. **McBrearty**, Referee

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

PARTIES TO DISPUTE: (

(**Chicago**, Milwaukee, St. Paul and Pacific Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, **GL-**
7751, that:

1. Carrier violated, **and** continues to violate, the Clerks' Rules Agreement at Chicago, Illinois in Seniority District No. 71 when it unjustly treated **employee** W. E. Parker by failing to award him Station & **Misc.** Timekeeper Position 08900 and **in** lieu thereof awarded the position to a junior **employee**.

2. Carrier shall now be required to assign employee W. E. Parker to Station & **Misc.** **Timekeeper** Position 08900.

3. Carrier shall now be required to compensate employee W. E. Parker the **difference** in rate of pay of Position 08900 and that of the position assigned to for each workday retroactive to December 21, 1973, and for all subsequent days **until** the violation is corrected.

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

OPINION OF BOARD: **Claimant** was not awarded the position of Station and Miscellaneous Timekeeper, Position No. 08900, because in Carrier's opinion Claimant "lacked sufficient fitness **and** ability to perform Station and Miscellaneous Timekeeper responsibilities." **Claimant's** experience had been limited to being a Sorter and a Balance Clerk, while the employee who did get the position, although junior to Claimant in seniority, had experience as a Waybill Filer **and** a **Comptometer** Operator.

Carrier and Petitioner both cite and rely upon Rule 7, which provides that, "fitness and ability being sufficient, seniority /shall prevail." ✓

The Board finds that under **Rule** 7, an employee is **not** entitled to a position unless such employee has sufficient fitness and ability to fill the position. In this regard, the Board has consistently held that Carrier may use tests or examinations or the observations and **recommendations** of supervisors as being **determinative** of fitness and ability (Awards **21131**, 18875, 18774, 18462, 17192, 15626, 14040, 7037, 5025, 5006, 4918 and 3273).

Petitioner has not **shown** in the instant case that Claimant possessed sufficient fitness and ability to handle the position of Station and Miscellaneous Timekeeper. All that Petitioner established through the testimony of J. J. Lynch, General Bureau Head, **was_that Claimant** "has done well with the activities assigned to his position /Balance **Clerk/** and has been assigned duties other **than** his position, **and** has also done vary well." To repeat, such testimony does not establish sufficient fitness and ability of Claimant to be a Station and Miscellaneous Timekeeper.

Furthermore, under the consistent decisions of this Board, Carrier's decision as to fitness and ability cannot be disturbed unless proved to have been made arbitrarily or capriciously. Such burden of proof rests squarely ⁴ on the Claimant (Awards 21246, 21243, 21131, 21119, 21009, 20964, 20569, 20361, 19404, and 19129).

Claimant has not met this burden. A thorough and extensive review of the complete record developed on the property, as well as the arguments of the parties, reveals that Carrier's decision not to award the position to Claimant was based on the observations of Claimant's ability and qualifications by Carrier's supervisors. So **long** as Carrier's supervisors had such opportunity to observe, and there is no showing that any arbitrary or capricious method or procedure was employed by them in making their **determination** we have no basis on which we could reasonably interfere with the decision **the** made. Therefore, 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 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

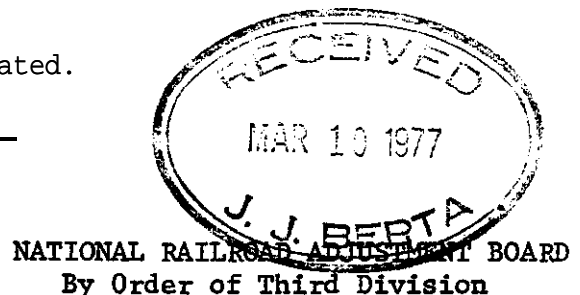
That the Agreement was not violated.

A W A R D

Claim denied.

ATTEST:

A. W. Pauls
Executive Secretary



Dated at Chicago, Illinois, this 18th day of February 1977.