

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21507
Docket Number CL.-21304

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7893, that:

1. Carrier violated Rules 7, 11 and 12 of the Agreement when it failed and refused to award Mr. J. E. Howard one of three positions as advertised in Customer and Freight Accounting Exhibits 2779, 2780 and 2781.

2. Carrier shall compensate Mr. J. E. Howard the difference in the rate of positions denied and the rate of his position until the violation is discontinued.

OPINION OF BOARD: Claimant is employed by Carrier as Clerk in Carrier's Customer and Freight Accounting Department, Jacksonville, Florida. He has seniority dating from 1941 but most of his service has been as a Storehouse Laborer.

On May 20, 1974 Carrier posted for bidding three Utility Clerk **positions** in its Control Bureau. Claimant bid on all three positions and was interviewed by Carrier officials to review his qualification, fitness and ability. This interview revealed that Claimant had no previous experience with work of the nature involved in the bulletined positions. **Thereafter** on May 30, 1974 the positions were awarded to **employees** junior to Claimant. Claimant sought written explanation under Rule 11 (f) and was advised by Carrier **on** June 4, 1974 as follows:

* * *

'Messrs. Spivey and Davis discussed the qualifications of these positions with you on May 28, 1974, at which time it was developed that you had no prior experience whatsoever with handling and researching move records and need **move** lists, which is a prerequisite of these positions. In this instance, therefore, you do not **have** sufficient fitness and ability for these positions; consequently they were awarded to junior employees who met the requirements."

Subsequently by letter dated June 10, 1974 the Organization on behalf of Claimant filed this claim alleging violation of Agreement Rules 7, 11 and 12.

Awards of this Division have held that where the Carrier decides that an applicant for a position lacks sufficient fitness and ability for a position sought, the burden then shifts to the **employee** to show that he does have sufficient qualifications. In this case the Claimant has not met that burden.

Most of Claimant's services with the Carrier had been as a Store-house Laborer. He transferred into the Customer and Freight Accounting Department on July 7, 1969, where he worked as Waybill **Assorter** until October 24, 1972. The record shows that he had previously been disqualified on at least four occasions when applying for higher rated clerical positions. The record does not establish that Claimant had sufficient fitness and ability for the Utility Clerk position in May 1974. Nor has Claimant shown that Carrier's decision was otherwise arbitrary, unreasonable or discriminatory.

The Board finds no basis for disturbing the action of the Carrier in this case, and the claim will 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 **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.



By _____ Order _____ of _____
ATTEST: *A. W. Paulke* Third Division
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1977.