

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21785
Docket Number CL-21707

John P. Mead, 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-8142, that:

1. Carrier violated the Clerks' Rules Agreement when it failed and refused to assign senior qualified **Clerk Mrs.** Georgia A. Sheard to the position of Record Clerk No. 52, in Carrier's Car Accounting Office, St. Louis, Missouri, in lieu of a junior **employee.** (Carrier's File **205-5025**)

2. Carrier shall now be required to compensate Mrs. Georgia A. Sheard for the difference in rate of pay, **amount** \$1.99 per day, beginning Wednesday, November 20, 1974 and continuing each subsequent work day thereafter, Monday through Friday, until violation is corrected.

OPINION OF BOARD: Petitioner claims that the Carrier's denial of promotion for Mrs. Georgia A. Sheard from Clerk to Record Clerk No. 52 violated the Rules Agreement. Carrier awarded the position to a less senior **employee** because it considered claimant unfit due to her attendance record in the position she then held. The Record Clerk position, according to the Carrier, requires daily attention, making regular attendance essential. Claimant's ability to perform the duties required when at work was not disputed.

Petitioner contends that an **employee's** attendance record in a prior position should not be a factor in considering fitness and ability under Rule 4(a), which reads, in part: "Promotion, assignments and **displacements under** these rules shall be based on seniority, fitness and **ability;** fitness and ability being sufficient, seniority shall prevail." **It** further contends that Carrier's allegation of unsatisfactory attendance was unsupported by the evidence offered during the investigation.

It is well established that in the absence of a showing that the Carrier's action was arbitrary **or** capricious, its decision as to fitness and ability should not be disturbed.

Without deciding whether or not an unsatisfactory attendance record might or might not be sufficient reason for determining lack of

fitness or ability, **we** must first determine whether the Carrier's allegation of unsatisfactory attendance was supported by substantial evidence. Such examination leads us to the conclusion that substantial evidence is lacking, and hence management's action is considered to have been arbitrary. **The** reasons for such conclusion are: (1) Claimant's attendance record was not offered for review in discussions on the property. (2) Attendance records subsequently offered indicate an average of less than 2 days absent per month after excluding maternity leaves and vacations, and no comparison with the group average or the accepted bidder's record was offered. (3) Perfect attendance reasonably cannot be expected from or required of any **employee**, and carrier did not provide sufficient proof of its allegation that the holder of Record Clerk No. 52 position must be on the job each day.

Claimant should be paid the difference between the rate of the job she held and the rate of Record Clerk No. 52 (\$1.99 per day), commencing November 20, 1974 and continuing each work day through January 9, 1975. (Carrier's submission to this Board states that the position of Record Clerk was abolished at end of tour of duty January 9, 1975. This is not denied in Employees' Rebuttal.)

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;

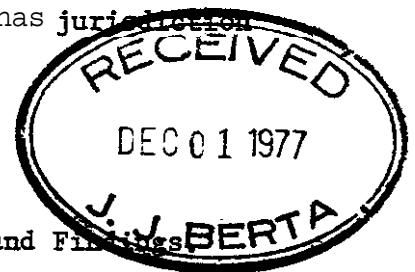
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; **and**

Carrier violated Rule 4(a).

A W A R D

Claim sustained in accordance with Opinion and Findings.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paul
Executive Secretary

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