

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21916
Docket Number SG-21788

Irwin M. Liebermn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

(a) On or about August 5, 1975 the carrier violated the current signalmen's agreement especially rule 55 when it disqualified signalman E. M. Meincke for 2nd trick signal maintainer's position at Kelly retarder yard.

(b) Carrier now be required to place Signalman E. M. Meincke to the position of 2nd trick maintainers position at Kelly retzrder yard, and compensate her for all the time lost subsequent to August 5, 1975.

/General Chairmanfile: AV-G-220. Carrier file: L-130-590/

OPINION OF BOARD: This is a "fitness and ability" dispute in which Claimant was disqualified after one day on a signal maintainer position. The relevant rule provides:

"RULE 55. FAILURE TO QUALIFY WITHIN OWN CLASS:

In assigning employees to fill vacancies or new positions in their class, seniority shall govern. Employees thus assigned, and employees exercising their displacement rights on vacancies or positions who fail to qualify within twenty-six (26) days worked may exercise their seniority rights only on new positions or vacancies."

The undisputed facts are that Claimant, after being bumped, exercised her displacement rights to the position of 2nd trick Signal Maintainer at Kelly retarder yard. After one day her supervisor discussed her ability to fulfill the functions of the position, and, with her agreement, advised her that she was not qualified to perform the duties of the position.

The Organization argues that she was not given the full 26 days in which to qualify and there was no objective evidence to sustain the decision to disqualify her. Additionally, it is pointed out that she was not afforded training opportunities to acquire higher skills on the basis of patent sex discrimination by the Carrier. The Carrier denies the allegations of the Organization and points out that Claimant herself agreed that she did not have the requisite skills.

It is clear that the issue of sex discrimination and the lack of prior training opportunity for Claimant is not within the purview of the Claim herein; it was neither raised initially nor is that issue timely. Had there been prior deprivation of opportunity for Claimant, that issue should have surfaced and been raised by Petitioner at that time.

It is so well established that it is unnecessary to comment on Carrier's right to judge the qualifications of employees. However, it must be reemphasized that once Carrier has made the determination that an employee is not qualified, the burden of proving otherwise shifts to Claimant. In this case not only has that burden not been met, but Claimant admitted that she was not qualified and should be disqualified. 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 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.

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Docket Number SG-21788

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.