

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21986  
Docket Number CL-21783

John P. Mead, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employees**  
PARTIES TO DISPUTE: (  
( Southern Pacific Transportation **Company**  
( (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,  
**GL-8156**, that:

(a) The Southern Pacific Transportation **Company** violated the **current** Clerks' Agreement when it **arbitrarily and capriciously** [sic] rejected Claire R. **Carle's** application for Position No. 517 Pate Clerk on contention that she was **obviously not immediately** qualified **therefore** [sic]; and, **and**.

(b) The Southern Pacific Transportation **Company** shall now be required to allow Claire R. **Carle** eight (8) hours' **compensation** at the rate of Position No. 517 **September 24, 1974** and each work day thereafter **until** she is placed thereon.

OPINION OF BOARD: Carrier's right to **make** the initial **determination** of a bidder's fitness and ability is undisputed in this case. The question is whether such right was exercised properly in light of Rule 27 and the **NOTE** thereto.

**RULE 27** and **NOTE** read as follows:

"**Employees** covered by these rules shall be in line for **promotion**. Promotions, **assignments** and **displacements** shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

**NOTE:** The word 'sufficient' is intended to **more** clearly establish the right of the senior **employee** to bid in a new position or vacancy, or to displace a junior **employee**, where two **or more employees** have adequate fitness and

"ability. In such cases the senior **employee** **will** be awarded the position unless it is obvious he cannot qualify. **Employees shall** be given cooperation in their efforts to qualify."

Petitioner contends that Carrier arbitrarily and capriciously rejected claimant's application for position No. 517 Rate Clerk because: (1) She did not have prior rating experience. (2) She had zero ability otherwise. (3) She had shown no interest in learning rate work. (4) She could not be trained because the current staff was overloaded, notwithstanding it had trained **employees** in the past who were not qualified.

The Carrier argues that **claimant** lacked necessary **minimum** qualifications to fulfill the duties required for the position, and that no evidence of probative value **was** presented to show that Carrier acted capriciously or arbitrarily or to counter Carrier's position that **claimant** lacked the requisite knowledge.

"Fitness and ability" was defined by Referee Robertson in Award **5348** as "such training, experience and character as to raise a reasonable probability that he would be able to perform all of the duties of the position within a reasonable **time**." This **view** was adopted by other referees in later cases, **most** recently Award **21107**, which recognized that:

" . . . . **it** is not necessary for an applicant to be **immediately** qualified to **assume all** the duties of the position without some assistance or training, or at least a break in or trial period. **However,** there **must** be a reasonable probability that the employee would be able to perform all time duties of the position within a reasonable period of time. If the employee is obviously unfit or unqualified, as in a situation where the job in question requires a high degree of skill which can be acquired only after a long period of training and there is no evidence that the employee has these skills or related skills, then the carrier is not required to give him or her a trial period."

This Board believes that fitness and ability should be judged in the **manner** indicated in the foregoing opinion. No proof was offered that claimant could perform the duties of Rate Clerk within a reasonable time, and testimony of the Chief Clerk regarding her training, **experience** and level of knowledge and testimony of the Chief Rate Clerk regarding the **minimum** requirements of the position, indicates that she probably could not so qualify. The Chief Clerk stated she could not qualify within six months, and no evidence of her ability to qualify **within** a shorter period was offered. It is not reasonable to provide six months trial or on-the-job training, in this Board's opinion.

Petitioner urged special attention be given that portion of the **NOTE** to Rule 27 providing that the senior **employee** will be awarded the position unless it is obvious he cannot qualify. That clause **commences** "In such cases...", referring to situations where the carrier is choosing between two or more **employees having adequate** fitness and ability, and does not apply in this case.

The contract language here involved, or similar language, has been interpreted in numerous prior awards cited by the parties. The prevailing **view** is that the carrier's determination should not be overturned unless the **employee** clearly establishes his fitness and ability, or proves that the carrier acted arbitrarily or capriciously. (See 3273, 14288, 14736, 17079 and 21119.)

Having concluded that petitioner did not meet the burden of overcoming Carrier's initial **determination** of lack of sufficient fitness and ability, we address the question of whether the supervisor making that determination acted arbitrarily or capriciously. His decision was based upon his personal opinion, formulated from knowledge of claimant's previous work experience and his **estimate** of her ability to **perform** the work of the position. There is no proof of hostility in the record. The fact that the rejection of claimant's bid **permitted** the selection of a bidder who had held the position previously may have been to the **supervisor's** liking, but the record contains no proof that it influenced his determination that **claimant** lacked the **minimum requirements**. The supervisor's failure to learn of some of **claimant's** prior efforts to acquire rate experience is **immaterial**, as **her** testimony shows he **would** have found that such efforts were abandoned in the early stages, and the record does not establish that **any** appreciable knowledge **was** gained **from** any outside source or **from** 1-candling files.

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The Board finds that the Carrier acted in good faith and no violation of the agreement occurred.

**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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulke  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.

