

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22025
Docket Number CL-21669

Robert J. Ables, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(**Express** and Station **Employees**
(Chicago, **Milwaukee**, St. Paul and Pacific
(**Railroad Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-8126, that:

1. Carrier violated and continues to violate the Clerks' Rules **Agreement at Milwaukee**, Wisconsin, when it unjustly treated Linda Borgwardt by refusing to assign her to Position **#34080** on **March 12, 1975** and instead assigned junior **employee** Mila Jovanovic.

2. Carrier shall now be required to assign **Employee** Borgwardt to Position **#34080** and compensate her with one day's pay at the rate of that position **commencing** March 12, **1975** and continuing until the violation is corrected and **Employee** Borgwardt is assigned to the position.

OPINION OF BOARD: The Carrier was inconsistent in **applying** the **promotion** rule, but it did not **violate** the rule because it **determined** by an objective test that Claimant did not have requisite ability to perform the job.

Claimant bid for a posted p-day (temporary) job as a stenographer. She was the **senior employee** bidding for the job. The Carrier found she was not qualified for the job because, upon test, she could not take shorthand **more** than 60 words per minute where the standard for the job **was** 80 words a minute. The **Claimant** was invited to **take** the test again but she did not do so.

Claimant argues under Rule 7 she **was** not **given** an opportunity to qualify for the job. This rule provides:

"**Employees** covered by these rules shall be in line for **promotion**. Promotion 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 the new position or vacancy where two or **more employees** have adequate fitness and ability.

Claimant's reliance on this rule for an **opportunity** to qualify for the posted job is **misplaced**. Rule 7 gives the senior employee preference over junior **employees** for **promotion**, **if** the **senior employee** has already been **determined** to be fit and able to do the job. This is a relatively strong seniority rule because the senior employee **need** not be overly concerned the **employer** will promote a junior **employee** **if** the **junior** employee is significantly more fit and able to perform **the** job than the senior employee. The senior employee only **has** to demonstrate that his fitness and ability is "sufficient." And this term is defined.

Rut, in this case, **Claimant** did not show she had requisite ability to do the job so there is no question about **presumptions** in favor of the senior **employee** in a **promotion** situation.

Claimant also relies on Rule 8. In this rule, an **employee** who bids for "and is assigned" to a **permanent** vacancy will be allowed 30 days in which to **qualify** and the Carrier is obliged to cooperate in helping that **employee** to qualify for the job.

Reliance on this rule by the **Claimant** is again misplaced.

The rule does not apply in this dispute because the job in issue is a **temporary job**, thus there is no **requirement** on the Carrier to give **Claimant** a grace period to qualify for the job - and, of course, she never was **actually** assigned to the job in dispute.

These findings in favor of the Carrier are sufficient to deny the **claim**, but the claim was not frivolous. Inexplicably, after the Carrier **determined** that Claimant was not qualified for the 30-day steno clerk job (position number 34080), the Carrier did assign **Claimant** for **three** days to the very **same** bulletined job. Carrier's explanation that shorthand was not required on the three-day job as reason why **Claimant** was awarded the second **temporary** job and denied the first can only add confusion in the **administration** of an important and difficult role on relative weight to be given seniority, fitness and ability, in a **promotion** situation.

Rigid consistency in the application of contract rules has its disadvantages but the **Claimant** here had reason to **complain** about not getting the first job following the Carrier's inconsistent application of the same **rule** for the **same employe** for the **same** job. Carrier's consistency here, either to award or deny both jobs, **would** have helped prevent this dispute. But, for the reason that **Claimant** did not show she was qualified for the first job, 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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