

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22108**
Docket Number CL-22112

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(
(**Elgin**, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8418) that:

1. The Carrier violated the effective Clerks' Agreement when on March 16, 1976, it refused to award Position AC-285, Head Clerk (Correction Accounts) to the senior bidder, Clerk Lance Porfilio, thereby depriving him of the right to demonstrate his fitness and ability for the position;

2. The Carrier shall now compensate Mr. Porfilio for the difference between the rate of pay of his position, AC-935 Senior Time-keeper and the rate of pay of Position AC-285 Head Clerk (Correction Accounts), **commencing** on March 16, 1976, and continuing for each and every work day thereafter through May 14, 1976.

OPINION OF BOARD: This is a "fitness and ability" dispute in which Claimant was denied a position to which his seniority is entitled him. This is the third in a series of related disputes involving the same parties, the first two being disposed of in Awards 21067 and 21353.

In this dispute Carrier takes the position that Claimant could not "comprehend a thorough knowledge" of the position in question within the sixty working days qualification period provided by the Agreement, **An examination** of the arguments made by Carrier indicate that Claimant was denied the position, which was awarded to a junior employe, for three principal reasons: 1. this was not an entry level position; 2. Claimant had worked 14 out of the last 17 years of service with Carrier in the payroll section while this position was in the Revenue Accounting Department; 3. Claimant's work attitude was poor. In addition, the record indicates that Carrier claimed that it awarded the position to an **employe** who was "more qualified."

It is noted that the Agreement makes no distinction between an "entry level" position and any other. Furthermore, the work attitude of an **employee**, even if germane and demonstrated, does not relate directly to the issue of fitness and ability, but rather is a disciplinary question. 3

It is necessary to question the validity of Carrier's discounting Claimant's successful role in other positions over a **17-year** period; the record indicates that he always was able to qualify in new positions. Granting that Claimant did not have the knowledge or direct experience to qualify in the new position **immediately**, there was no showing by Carrier that he could not have performed with proper supervision and cooperation of supervisors after sixty days (see Award 21067). As we have said **repeatedly, experience** cannot be a consideration in determining the sufficiency of the initial fitness and ability for promotion (see Award 4026 and Award 21353). The Claim **must** be sustained. 4

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of **June 1978**.