

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22442
Docket Number CD-22319

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8474) that:

1) Carrier violated the Clerks' Rules **Agreement** at Chicago, Illinois in Seniority District No. 152 on **June 1, 1976 when it** unjustly treated **employe** Barbara **Crum** by **failing** to award her Assistant Cashier Position No. **89320** and in lieu thereof awarded the position to a junior **employe**.

2) Carrier shall now be required to assign **Employe B. Crum** to Assistant Cashier Position No. **89320**.

3) Carrier **shall** further be required to compensate **Employe B. Crum** an additional eight (8) hours pay at the pm rata rate of Position **89320** for June 1, **1976** and for each subsequent workday until the violation is corrected.

4) Carrier **shall** be **further** required to pay seven percent (**7%**) interest **compounded annually on such rate until such time as** claimant is made whole.

OPINION OF BOARD: Claimant applied for an advertised vacancy (Assistant Cashier Position No. **89320**), but it was awarded to a junior **employe** because, according to Carrier, Claimant "lacked sufficient fitness and ability."

Subsequent to an "unjust treatment" investigation, Carrier restated its conclusion which **prompted** this claim.

Rules 7 and 8 pm-rides:

"RULE 7 - PROMOTION

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 employe to the new position or vacancy where two **or more employes** have adequate fitness **and** ability."

"RULE 8 - TIME IN WHICH TO QUALIFY

(a) When an employe bids for **and** is assigned to a **permanent** vacancy or new position he will be **allowed** thirty (30) working days in which to qualify and **will** be given full cooperation of department heads and others in his efforts to do so. However, this will not prohibit an employe from being removed prior to thirty (30) working days when **manifestly** incompetent. If an **employe** fails to **qualify** he **shall** retain all seniority rights **but cannot displace a regularly** assigned employe. He **will** be considered furloughed as of date of disqualification and **if** he desires to protect his seniority rights he must comply with the **provisions** of Rule **12(b)**."

The **parties** have cited various Awards which deal **with** the rights **and** obligations of the respective parties in these types of disputes, but we find no need to **comment** upon those citations because we **are** unable to find any basis for sustaining the claim. In short, we find nothing of substance which **reasonably** suggests that "**personal reasons**" **motivated** the **Carrier's** action, or that Claimant was victimized by prejudgment. The **thirty** (30) day rule **does not require** an initial appointment.

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 **Employes** involved in this dispute **are** respectively Carrier and Rmployes 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. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1979.