

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22462

Docket Number CL-22705

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8722) that:

(1) Carrier violated the effective Agreement, specifically Rules 25 and 33, when effective May 2, 1977, Claimant F. Tyler was arbitrarily and improperly disqualified from Position 12116, Distribution Clerk, in Seniority District No. 1.

(2) Due to Carrier having failed to render decision within 10 days of May 6, 1977, and having also failed to show Claimant was not qualified on Position 12116, Distribution Clerk, Claimant shall now be returned to Position 12116 and be compensated for all time lost as result of this improper disqualification.

OPINION OF BOARD: The record shows that claimant was assigned to position No. 12116, Distribution Clerk, on March 21, 1977. On May 2, 1977, claimant was removed from position No. 12116 on the basis that she failed to qualify for the position. Hearing was requested on behalf of claimant under the provisions of Rule 25 of the Agreement.

The requested hearing was scheduled for May 6, 1977, and commenced on that date, but was not completed. The fact that there may have been a malfunction of Carrier's equipment, or that claimant may have had a heavy West Indies' accent, as stated by the Carrier, cannot be accepted as proper excuses for the Carrier not completing the hearing that commenced on May 6, 1977, and rendering a decision within the time limits specified in the Agreement. However, it is clear from the record that claimant waived any objection to re-scheduling of the hearing to May 18, and later, at her request, postponed to May 25, 1977.



It is a well established principle of ~~the Board that~~ it is the Carrier's prerogative to determine the qualification of its employes, and when the Carrier determines that ~~an~~ employe is not qualified for a position, the burden then shifts to the employe to prove that he or she is qualified.

The Board has carefully reviewed the transcript of the hearing, and exhibits, and we do not find that claimant met the burden of proving that she was qualified for position No. 12116. On the other hand the Carrier submitted substantial evidence showing that she was not qualified for the position. The record also shows that claimant had previously been cautioned on different occasions about her job performance.

Under the conditions that existed, the Board does not consider the rescheduling of the hearing to have been prejudicial to claimant's right to present evidence to prove her qualifications for Position No. 12116, which she failed to do.

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 Employee involved in this dispute are respectively Carrier and Employee 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 31st day of July 1979.