

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22470
Docket Number CL-22409

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8547) that:

1. Carrier violated the effective Clerks' Agreement when it failed to assign senior furloughed employee Gary Putnam to Position No. 6 - General Clerk, but instead, assigned it to an employee junior in service to Claimant;

2. Carrier shall now compensate Gary Putnam for eight (8) hours' pay at the pro rata rate of Position No. 6, which is in addition to any monies already paid, commencing with October 23, 1976, and continuing for each and every day thereafter, five days per week, that a like violation occurs.

OPINION OF BOARD: The pivotal question in this dispute is whether claimant possessed sufficient fitness and ability for this position or was reasonably qualifiable pursuant to the pragmatic intent of Agreement Rule 16.

In Third Division Award 21802 where we construed the interpretative relationship between the seniority fitness and ability rule and the time in which to qualify rule, we stated in pertinent part that:

"The harmonious reading of these rules does not mean that fitness and ability be such that an employee need fully and completely perform the work immediately upon assuming the position, but that it be such that he could do so within the period of time permitted in the qualification rule. Nor does such reading mean that an employee

"obviously lacking fitness and ability be given the qualifying time when it is apparent he could not qualify within that period."

We believe this principle is applicable here.

Admittedly, claimant had a greater seniority date than the employe selected for the contested position, but he had -r worked any position other than yard clerk during his employment with Carrier. He was on the furloughed list at that time of this selection. Under the terms of the collective agreement, Carrier was required to consider him for assignment consistent with the requirements set forth in Agreement Rules 19(g), 8 and 16.

He did not possess key punching skills and could type about twenty (20) words per minute.

The other employe had accumulated two and one-half (2½) months seniority at the time of her selection, but was superbly trained as a key punch operator and typist.

The choice, in effect, was between claimant who had yard duty clerical experience, no key punching knowledge and some typing competence and the other employe, who was a superlative keypunch operator.

If the position called for exclusively key punching duties which could not be reasonably acquired within the forty five (45) day qualifying period, then claimant was unqualified for the job. But the position description delineated other duties as well.

We recognize Carrier's concern to select the most qualified employe available, but this decision is constrained by Agreement Rules.

In the instant case, we do not believe that Carrier thoroughly considered claimant's background and potential. Assuredly, it had the right to make the relative qualification determination and to use appropriate evaluative criteria to accomplish this end. But in reaching this decision it had to factor into the sum total calculation the person's overall ability level. The position was not exclusively a key puncher's position. It encompassed a wider sort of clerical duties.

There was no indication that claimant could not perform these other duties or acquire the minimally necessary key **punching** skills.

Certainly the other person's two and one-half (2½) months employment experience at the **time** of the selection would have **some limiting** characteristics as well.

The intent and purpose of Rules 8 and 16 are to insure that a person having **adequate** capacity be given an opportunity to qualify for the **job**. But more importantly **Rule** 19(g) activated their application **in** this situation. X-1

There was no persuasive indication that claimant could not acquire acceptable key punching skills in that **time** or perform the other duties. The Agreement does not require that the most qualified **person** be selected, only that the senior **employee** have adequate fitness and ability. It is an average normative requirement. X-2

The record, in **this** connection, does not show that **claimant's** two (2) years employment experience, albeit intermittent, was incompatible with the job's full requirements.

If it took, for example, three (3) to six (6) **months** training to develop the minimally acceptable level of key punching operating skills, then Carrier's position would **be** unassailable. But there was no compelling demonstration that claimant could not learn this skill while on the job. **Based** on this assessment we must conclude that Carrier's selection was arbitrary and-contrary to Agreement **Rules** 19(g), 8 and 16. Their interrelated significance **must** be observed.

We will not grant the relief sought by **claimant** since it's unreasonably excessive, but will direct that Carrier pay him the difference, between what he earned from October 23, 1976 until August 29, 1977, when he was awarded a regular position and **what** he would have earned had he been assigned the General Clerk's position.

However, we recognize the distinct possibility that he might wish to remain in his new position and if that is his decision, then the above determination will stand. In the event, however, that he chooses to accept the disputed position, then we direct that he be paid the difference between the new position and the General Clerk's No. 6 position, if the latter job is higher paid.

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Docket Number CL-22409

~~Page 44~~

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 to the extent expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary,

Date at Chicago, Illinois, this 31st day of July 1979.

