

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22724
Docket Number MS-22585

Kay **McMurray**, Referee

PARTIES TO DISPUTE: (Victoriano **Ramos**
(Southern Pacific Transportation Company
((Pacific Lines) .

STATEMENT OF CLAIM: "This is to **serve** notice, **as required** by the rules of the National Railroad **Adjustment** Board, of my intention to file an **ex-parte** submission in thirty days from this date of notice covering an **unadjusted** dispute between the Southern Pacific Transportation Company and myself.

From the Clerks Assignment and Vacancy Notice dated August 1, 1977, I place a bid for position **#20** Rate Clerk as listed on Notice **#15** of the above date in August. My bid was not accepted by the Carrier as a qualified bid even though I had passed a Rate Clerk course.

To my knowledge the Carrier violated **Rules #7** and **#26** as well as all other **corelated** rules of the Clerks Agreement."

OPINION OF BOARD: This claim **comes** to us appealed by the Claimant, Mr. Victoriano **Ramos**, who alleges impropriety in the fact that Carrier did not award him the position **of Rate** Clerk, Position No. 20, which had been advertised by Bulletin No. 15 dated August 1, 1977. Carrier states the basis for its action was that Claimant did not possess the necessary fitness, ability and knowledge to perform the duties of the assignment. Claimant, on the other hand, contends that he was qualified, pointing to the fact that he had recently passed a correspondence course on freight rates and believed he was qualified.

We have thoroughly reviewed the record in this case as well as the points raised by the Claimant. However, after this thorough review, we find that we are unable, at this **time** and given the circumstances of this case, to rule in favor of the **Claimant**. First, the claim before this Board was not handled in accordance with the agreement between the parties prior to its appeal to this Board. The record is clear that, most importantly, it has never been appealed to the Carrier's highest officer **on** the property as is required by both the agreement and the Railway Labor Act. This Board has consistently found that following the statutory and agreed upon procedures for the presentation and appeal of claims is a **must**. See, for example, Third Division Awards, 16452, 19781, 19751, among **numerous** others.

Secondly, however, as **much** as we admire Claimant's desires to improve his position and income with the Carrier, we cannot fault Carrier's judgment that at the time he bid on the position in question, he **lacked** the requisite fitness and ability to perform the duties of a **Rate** Clerk position satisfactorily. The correspondence course which Claimant took was an introductory course to freight rates, and we cannot dispute Carrier's analysis of the course as being introductory in nature and one that would in no way qualify him to immediately perform all the duties of Rate Clerk Position No. 20. The record also shows that previously, in 1971, he had taken a rate course conducted by the Carrier and only obtained a grade of 49.3. percent, the lowest in the class. Claimant had not, at the **time** of the claim, completed an Accounting Department Rate course successfully. On the basis of the foregoing **record**, we cannot substitute our judgment for that of the Carrier in this matter.

The record, however, does show that the Claimant is again enrolled in a Carrier rate course. We hope that he continues his efforts to successfully learn enough **knowledge** of rates so that subsequently he will be awarded a rate clerk's position. It appears that management recognizes the Claimant's zeal for improving his position with the company, and we would expect them to continue to treat the Claimant fairly in the event he does acquire sufficient fitness and ability to be awarded a rate clerk, or other position.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 **31st** day of January 1980.