NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22892
THIRD DIVISION Docket Number CL-22962

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8784) that:

(1) Carrier violated the Agreement between the Parties when, on June 23, 1977, it denied Mr. P. M. Mason displacement rights that had accrued to him under the Agreement Rules when he was not permitted to displace on Agent position at St. Bernard, Ohio, and

(2) As a result of such Carrier action, Mr. Mason shall be compensated for an additional eight (8) hours' pay per day ($57.10), beginning June 23, 1977, and continuing until he is permitted displacement rights on the involved Agency position in Carrier's offices at St. Bernard, Ohio.

OPINION OF BOARD: Claimant, P. M. Mason, at the time of this dispute, occupied the Agent position in Glendale, Ohio. Claimant requested permission to exercise displacement rights onto a position of Agent in Carrier's St. Bernard Agency at Cincinnati. The St. Bernard position is a more demanding one; it is a more complex operation than that at Glendale. Carrier denied Claimant's request due to an evaluation that Claimant did not possess sufficient fitness and ability for the St. Bernard position.

The Organization contends that Carrier violated the Agreement between the parties by denying Claimant displacement rights. The primary rule cited by the Organization is Rule #30. It states:

"Promotion, Assignments and Displacements.

Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements under these rules 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 employee to bid in a

"new position or vacancy, or exercise displacement rights, where two or more employees have adequate fitness and ability."

In construing rules such as Rule 30 herein involved, this Board has held that this is not a strict seniority rule. Rather, seniority is limited by the application of fitness and ability. In evaluating the question of fitness and ability, we have consistently adhered to the principle that Carrier has the exclusive prerogative to determine whether an employe has the necessary fitness and ability for a position. This determination once made will be sustained unless it can be established that Carrier's decision was biased, arbitrary or capricious. See Awards 2209, 21328, 20878, 20361, 17489. The Organization has the burden of establishing that Carrier's action was arbitrary or capricious.

While the Employes have introduced numerous contentions to support its position that the Agreement was violated, the fact remains that there is a complete failure to prove that Carrier's action, in not permitting Claimant to displace on a position more demanding than the one he had held for some ten months, was arbitrary or capricious or an abuse of discretion. Without such proof, the claim must be denied.

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 Employes 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.

RATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.