

NATIONALPAILEOAD **ADJUSTMENT BOARD**

**THIRD DIVISION**

Award Number 22980  
Docket Number CL-22880

Robert A. **Franden**, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight **Handlers**,  
( Express and Station Employees

PAKCIES TODISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific  
( Railroad Company

STATEMENT OF CLAIM: Claim of **the** System **Committee** of the Brotherhood (GL-8740)  
that:

1) Carrier violated, and continues to violate the Clerks' **Rules** Agreement at Chicago, Illinois when it denied Employee **K. O. Sveen** his right to exercise seniority to Position No. 15940, Bats Check Clerk in Seniority District No. 1.

2) Carrier shall be required to compensate Employee Sveen the difference in the rate of pay of Position No. 15940 and his present position **commencing** on November 29, 1977 and continuing for **each** workday that he is denied his seniority, promotion **and** displacement rights.

3) Carrier shall pay Employee Sveen interest at the rate of **7½%** compounded annually on the anniversary date of this claim on the amount due in Item 2 above.

OPINION OF BOARD: Claimant was displaced on his position as Bate Analysis Clerk by a senior **employee**. Claimant then announced that he desired to exercise his **seniority** and displace a junior **employee** on a **Rate** Check Clerk position. **The** Carrier disapproved such displacement on the grounds that **claimant** did not possess sufficient **fitness** and **ability** to perform the functions of the position. It is the denial of the right to exercise his seniority on that position that forms **the** basis for this claim.

**Rule** 12 of the Agreement establishes the fitness and ability criteria for the exercise of seniority **in situations** such as that in **the** instant **matter**. It is axiomatic that the Carrier has the prerogative of determining fitness and ability and that absent a finding that its determination was arbitrary and capricious we will not disturb same. From the record we are unable to find **that the** Carrier's **determination** was arbitrary or capricious and hence will not sustain the claim. To the contrary, it was **shown** that Carrier based its decision on an objective review of claimant's past performance.

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** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By **Order** of Third Division

ATTEST :

*A.W. Paulos*  
Executive **Secretary**

Dated at Chicago, **Illinois**, this 29th day of September 1980.