

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23050
Docket Number CL-22910

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(**Freight Handlers, Express and Station Employees**
PARTIES TO DISPUTE: (
(Chicago, **Milwaukee**, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8759)
that:

1) Carrier violated and continues to violate the Seniority, Promotion, Bulletin, **Assignment**, and related rules of the Clerks' **Agreement** when it arbitrarily refused Employee D. G. Olson's application for the Chief **Revising Clerk** position in the **Regional** Accounting Department in Seattle, Washington.

2) Carrier shall be required to recognize Employee D. G. **Olson's** contractual rights and his application for the position of Chief **Revising Clerk**, assign him to that **position**, and compensate him an additional eight (8) hours pay at the rate of \$58.54 for each workday **commencing** July 11, 1977 and continuing until placed thereon.

3) Carrier shall pay Employee D. G. **Olson** interest at the current rate on the amount of reparation due in Item (2) above **compounded** annually on the anniversary date of this claim.

OPINION OF BOARD: This dispute relates to another claim filed by petitioner, namely, his claim in, Award No. 23047 that he was unjustly treated when he applied for the **Revising Clerk-Grade A** position No. 89760 in July, 1977. In the instant claim **Claimant** argues that he was also unjustly treated when he submitted a bid application for the Chief **Revising Clerk's** position No. 89740 in Seniority District No. 45, circa June, 1977, and was rejected in favor of a junior **employee** who was selected to fill this **position** on July 11, 1977.

Similar to his contentions in the other dispute, **Claimant** asserts that he possessed **sufficient ability and** fitness within the judicially interpretative **meaning** of **Rule 7** to be given an opportunity to qualify for the Chief **Revising Clerk's** position **consistent** with the requirements of **Rule 8**. Carrier, **contra-**wise, contends that he is unqualified for this position.

In our review of the July 22, 1977 investigative transcript we concur with Carrier that he was unqualified for this position at the time he submitted his application. We recognize that his educational training and tariff experience

were presumptive indicators of ability, but we do not believe that he was truly qualified for the Chief Revising Clerk's position.

For example, our detailed **analysis** of this **position** clearly reveals a higher level of technical skills and general management duties which were beyond the position expectations and requirements of the Revising Clerk-Grade A **position**. These distinctions are not **nuancial** or superficially different. **He** did not have the **background** and hands-on experience to **manage** and direct other Revising Clerks or the definable experience to handle the Chief Revising Clerk's duties. It might well be reasonable to postulate that **Claimant** would learn these duties once on the job, but **many** other moderately talented **unqualified employees** would be able to acclimate to higher rated jobs, if given the opportunity. What is important in this case is whether Claimant was qualified as evidenced by an acceptable modicum of sufficient **fitness and ability** per Rule 7 and whether Carrier arbitrarily disregarded his qualifications. The record does not show either contention. **His** bid application was properly rejected.

This Board will not burden the record with **extensive** citations of case law on the employer's indisputable right to determine fitness and **ability standards** for positions. But we think that Third Division Award 16871's **basic conclusion** succinctly articulates this right and its legal parameters. It states:

"*** The Awards are legion that it is the Carrier's prerogative to determine the fitness and ability of **an employee** for a particular position. *** **Less a showing** that the Carrier's determination as to fitness and ability is arbitrary and capricious **it will** not be disturbed. The burden is on the Petitioner to make such a showing. ***"

Claimant did not establish persuasively that he was fit to assume the Chief **Revising** Clerk's position and Carrier's rejection of his bid application was neither capricious nor inconsistent with **its right to determine qualifications**. We will reject the claim.

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;

Award Number 23050
Docket Number CL22910

Page 3

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. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of **November** 1980.