

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23051
Docket **Number** CL-22911

George S. Roukis, Referee

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

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood (GL-8760)
that:

1) Carrier violated, and continues to violate, the Clerks' **Rules** Agreement at Seattle, Washington **commencing** on July 11, 1977 when it failed to assign **Position** No. 89740 to **employee M. D. Jonas**.

2) Carrier shall be required **to recognize** **Marvin D. Jones'** seniority, promotion **and** displacement rights, assign **him** to Position No. 89740 **and com-**
pensate him for an additional day's pay at the appropriate rate for each work day he is denied **his** contractual rights to **that position**.

3) Carrier shall pay **employee** Jonas interest at the rate of 7% **com-**
pounded annually on the anniversary date of this claim on the amount due **in**
Item 2 **above**.

OPINION OF BOARD: This dispute is **similar** to the claim filed by Claimant Don G. Olson for the Chief **Revising** Clerk's position No. 89740 bulletined on June 30, 1977 and awarded to a junior employee on July 11, 1977. The **Claimant** in this **instance**, Marvin D. **Jones**, a Grade B **Revising** Clerk at the time this claim was initiated, **contested** Carrier's selection of **Ms. Linda Turner** for this position and requested an unjust treatment **hearing** pursuant to Rule 22(F) to determine whether Carrier's decision was alternatively proper or capricious. The aforesaid hearing was held on August 18, 1977 **and** Carrier subsequently apprised **Claimant** by letter, dated **August** 23, 1977 that his **rejection** was unbiased. Specifically the letter, which was written by the hearing officer, stated in part that: "Testimony which was given at the investigation does not substantiate your contention of unjust **treatment**, therefore, it is **my** decision that your charge was **and** is without factual or schedule **rule** support." This disposition was appealed.

In our review of the record, we agree with Carrier's position. **Claimant** did not possess the varied experience and skills **needed** for this job. It required significant Revising Clerk - Grade A position experience, which necessitated the **supervision and** training of Grade A and Grade B **Revis-**
ing Clerks, work **competency evaluation**, the maintenance of tarfff files and

the application of **codes**. Importantly it required the **incumbent** to rate tariffs, which presupposed experience, not interest. Admittedly, Claimant asserts that he **performed** analogous duties, but their substantive quality was indicative of potential not definable fitness. In fact, Carrier supervision **found** him unqualified to perform the Chief **Revising** Clerk's functions. **His** experience included being an operator, an **extra** load operator, a switching and interchange clerk and **assignments** TOFC work. He **testified** that **he** had never been required to go into rate tariff to move a **commodity** from one location to another, although he noted that he was required to work from tariffs **and** furnish rate information. **He** stated ~~that~~ he wanted to get into the regional accounting **department** "to begin to learn rates", an important and critical **function** of the Chief **Revising** Clerk. Clearly from the record, it becomes difficult **for** this **Board** to conclude that he was sufficiently fit and qualified for this **position** as per the intended meaning of **Rule 7**. At best, we **find** a "potential" that is arguably debatable. **In** Third Division Award 10345, which we feel is pertinent to **our findings** herein, we stated in pertinent part:

"It is difficult to conclude on the record that the Carrier was unreasonable, partial, arbitrary or capricious in determining, **under all the circum-** . stances, that Claimant was not sufficiently qualified. The Carrier is under no obligation to undergo the hazard and expense of the qualifying period provided **in Rule 2.5, unless the Senior** has something else to offer other than potentiality."

Applying this holding to the case before us we find that Claimant's qualifications represent more potential than an unmistakable demonstration of sufficient fitness **and** ability **and** Carrier's rejection of his position bid application was without bias and consistent with its prerogatives.

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 apprwed June 21, 1934;

That this **Division** of the Adjustment Board has jurisdiction over the dispute involved herein; **and**

That the Agreement was **not** violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

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