

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 23064  
Docket Number CL-22662

Joseph A. Sickles, Referee

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

**STATEMENT OF CLAIM:** Claim of the System **Committee** of **the** Brotherhood (GL-8632)  
that:

1) Carrier violates, and continues to violate, **the** Clerks'. Rules Agreement in Minneapolis, Minnesota **when** it arbitrarily **and unjustly** denied Employee **James E. Marsh** the right to displace on Position No. 10010, General Clerk, **on** January 11, 1977.

2) Carrier shall be required to assign Employee James E. Marsh to Position 10010, General Clerk, **in** the Division Manager's office and compensate him additional eight (8) hours pay at the **pro** rata rate of Position 10010 **commencing** on January 11, 1977 and for each subsequent workday he is denied **displacement**thereon.

3) **Carrier** shall be **required** to pay **7½%** interest to be **compounded** annually on the **anniversary** date or dates of **this** claim, computed **on the** amount due in Item 2 above.

**OPINION OF BOARD:** When **the Employee's** position was abolished, in order to become familiar **with** the duties and **responsibilities** of a different position **the** Claimant devoted approximately **seven** (7) **days** of his own time in **an** effort to learn the work of said position before **he** attempted to exercise displacement rights.

**On** January 10, 1977 tbe Employee attempted to take over **the** duties, but his request was denied. Thereafter, he requested and was granted an unjust treatment investigation, however the Carrier continued to assert **that** tbe **Employee** lacked sufficient fitness and ability for the position in question, which prompted this dispute.

Rule 7 specifies that promotions **shall** be based on seniority, fitness and ability; fitness **and** ability being sufficient, seniority **shall** prevail. Thus, the Organization asserts that said **rule** gives the **senior** employe preference over junior **employees** for promotion, providing the senior **employe** **has** been determined

to be fit and able to perform the duties assigned to the job. Accordingly, the Organization **asserts** that this **Employee's** capabilities are not to be compared with the fitness and ability possessed by junior **employees, and because** this Claimant has demonstrated the potential to perform all the duties of the position **within** a reasonable **time**, given the **assistance** and guidance of department heads and others, the **claim** should be sustained.

The Carrier reminds us that the **Employee** conceded, at **the** investigation, that he had never worked in a position of the nature involved herein and that he could not do the job as well as the then current **incumbent**.

The Carrier **made** the determination that the Employee did not possess the requisite fitness and ability to perform the job and, thus, it became incumbent upon the Employee to demonstrate to the contrary.

We have reviewed the rather extensive record, and we are unable to find evidence that this Employee has presented information which suggests that the Carrier's determination was not properly arrived at. Accordingly, **we** will deny 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;

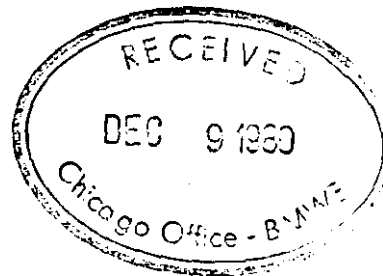
That the Carrier and the **Employee** involved in this dispute are respectively Carrier **and Employee within** the meaning of the Railway Labor Act, as approved June 21, 1934;

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

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.