

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23088

Docket Number CL-22525

William M. Edgett, Referee

(Brotherhood of Railway, Airline and **Steamship** Clerks,
(Freight **Handlers**, Express and **Station Employees**
PARTIES TO DISPUTE: (
(Railroad Perishable Inspection Agency

STATEMENT OF CLAIM: **Claim** of **the** System **Committee** of the Brotherhood (GL-8550)
that:

(a) The Company violated the **Rules** Agreement, effective January 1, 1948, especially Rule 10 of **this** Agreement, when it would not **allow** Claimant K. D. **Walls** to displace a junior employe on **his** seniority roster **on** November **15**, 1976.

(b) **Claimant** Walls should be restored to service and paid for all time lost during the period he was arbitrarily denied his displacement **rights over** a junior employe, beginning November **15**, 1976 **and** to run continuously until **this** dispute is settled.

OPINION OF BOARD: **Claimant** K. D. **Walls** was employed by the Railroad Perishable Inspection Agency as a Cooper. His Cooper position **was** abolished on November 24, 1976 **and** he attempted to exercise displacement **rights** to a **position of Inspector-Condition and Breakage** which **was held** by a junior **employe**. Carrier denied Claimant's request on the basis **that** he did not possess the **necessary** fitness and ability required for the Inspector position.

The applicable Agreement Rule in this dispute is **Rule** No. 6 which reads:

"Promotions through bidding and displacement under these rules shall be baaed on seniority, **fitness and** ability; fitness and ability being sufficient, seniority shall prevail."

This **same** rule between these same parties **involving** this same type of situation, i.e., Cooper vs. Inspector-Condition and Breakage, was decided by the Board in Award No. 16480. In that **Award** we said:

"This Board has been petitioned to interpret and apply rules identical **or** similar to **Rule 6** in a great number of disputes. In essence we have held in such cases **that:** (1) the current possession of fitness and ability **is** an indispensable requisite that **must** be met before seniority rights become dwinant; and (2) this Board will not set aside Carrier's **judgment** of fitness and ability unless **it** is arbitrary or capricious or has been exercised in such a **manner** as to circumvent the Agreement. See, for example, Award No. 11941, 12461, 13331, 14011, **15164**. Also, we have held that for us to set aside a Carrier's judgment the record must contain substantial evidence of probative value that the claimant **employee** possessed, at the **time**, sufficient fitness and ability to perform the duties of the position which he sought. Id.

"The record in the case before us is barren of evidence **that** would support a finding that Claimant possessed the **indispensable** fitness and ability. In fact the record as a whole can be construed as an admission by Claimant that he was lacking in the requisite. For the foregoing reasons we will deny the claim."

X-! In this case too, Petitioner has failed to sustain the burden of shoving by substantial probative evidence that claimant did possess the requisite fitness and ability or that the decision of the Agency **was** arbitrary or capricious. See also Third Division Awards Nos. 21243, 21328, 22029.

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.

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Claim denied.

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

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.