

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23896  
Docket Number MS-23346

George E. Larney, Referee

PARTIES TO DISPUTE: ( Betty Howard  
( Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of Ms. Betty Howard that:

(A) The Carrier violated Rules 3, 7, 8, 25, and others, of our Effective Agreement when they refused, on March 26, 1979 to properly award a bulletin position to the oldest successful bidder on Clerk's Seniority Roster District No. 2 at Minneapolis, Minnesota.

(B) Carrier shall now compensate Ms. Betty Howard \$15.97; the difference between the rate of her assigned position and the position she had filed application for of Interline Rate and Division Clerk, which Carrier assigned to a Clerk junior to Claimant, Ms. Betty Howard. Claim dates are April 2, 3, and 4, 1979."

OPINION OF BOARD: Now here comes Claimant, Mrs. Betty Howard, a Clerk in Carrier's Accounting Department, holding seniority date of November 2, 1970, on Clerk's Seniority Roster District No. 2, before this Honorable Board, asserting, contending and alleging the following:

1. That Carrier denied her bid for the position of Interline Rate and Division Clerk (Position #13021) by awarding the position to Clerk Leona Hall, an employe junior in seniority to herself;
2. That Carrier in denying her bid for said Position #13021, violated several Rule provisions of the Controlling Agreement bearing effective date of July 1, 1968, chief among which are set forth hereinabove in the Statement of Claim;
3. That contrary to Carrier's determination, she does, in fact, possess sufficient fitness and ability to perform Position #13021, and therefore should have been afforded the contractual opportunity of the thirty (30) day trial period to qualify for said position;

and

4. That Carrier's action in award Position #13021 to Leona Hall, the junior Clerk, was arbitrary and without just cause because of Carrier's failure to demonstrate her alleged lack of fitness and ability to perform said position.

Carrier contends the duties of the Interline Rate and Division Clerk position are very complex, so much so, that **employees** attempting to perform said duties without any prior experience **in** the position, have, from its past experience, a very difficult, if not impossible time meeting performance criteria and expectations. As a result, Carrier states it established in September of **1973**, a trainee position **in** which clerks were afforded the opportunity **to** acquire sufficient fitness and ability to perform successfully the duties of the subject Position **#13021**. Carrier noted that it clearly stated in the bulletin establishing this trainee position that upon completion of training the employee could move onto vacancies in rate **or** division positions. Carrier further notes that at the **time** the trainee position was established and henceforth from this time, **Claimant** has never bid on said **trainee** position. **However, Leona** Hall, the clerk junior in seniority to Claimant who was awarded the subject position had received **more** than fourteen **(14) months of** training and experience by way of performing the trainee position. By virtue of her not bidding for or ever holding the trainee position nor taking any other action which may have served to familiarize herself with the duties of Position **#13021**, Carrier asserts the Claimant barred herself from the opportunity to gain the requisite experience needed to qualify for said position. Claimant's lack of this trainee experience Carrier argues, prompted its determination she did not possess sufficient fitness and ability to perform the subject position whereas, conversely, such trainee experience acquired by **Leona** Hall, the junior clerk, did in its view serve to support the judgment she did possess sufficient fitness and ability to perform the disputed position. Carrier refutes Claimant's fitness and ability to perform Position **#13021** based **simply** on the contention that over the years while employed in the Accounting Department she has qualified on a number of other positions. Carrier maintains that once having determined Claimant did not possess sufficient fitness and ability to perform Position **#13021**, it no longer was contractually obligated to consider her seniority status relative to that of **Leona** Hall's who was **deemed** to possess such sufficient fitness and ability to perform the subject position.

Over the years, this Board has established several bedrock principles applicable to considerations of seniority standing in conjunction with fitness and ability criteria relative to awarding bulletined positions; one of which is, that under the given Agreement Rules in effect here, once Carrier has determined that a senior applicant lacks sufficient fitness and ability, which is its contractual prerogative to judge, the burden of proving otherwise shifts to the senior applicant rejected for the position. We reiterate this principle here and in evaluating the evidence of record before us in its entirety, we find Claimant has failed to present any persuasive evidence she possesses sufficient fitness and ability to perform the disputed position of Interline Rate and Division Clerk. Accordingly, we find Carrier did not violate the Controlling Agreement when it rejected Claimant's bid and awarded the Position **#13021** to a clerk with less seniority.

**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.

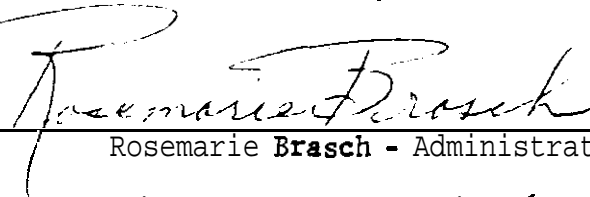
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By



Rosemarie **Brasch** - Administrative Assistant

**Dated** at Chicago, **Illinois**, this 26th day of May 1982.