

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23942
Docket Number CL-23957

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, **Express** and Station **Employees**

PARTIES TO DISPUTE:

Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood
(GL-9366) that:

(1) **Carrier** violated the Agreement between the **parties** when on April 9, 1979, It **assigned** temporary **Ticket** Agent position C-065, **Pittsburgh, Pennsylvania**, to junior employee T. L. Couch, thereby **excluding** senior employee Mary A. **Collavo** who submitted a bid for the position in **accordance** with said Agreement, and

(2) As a result of such impropriety, **Carrier** shall **be** required to compensate Claimant M. A. **Collavo** eight (8) hours' pay at punitive rate beginning April 16, 1979, and continuing each subsequent work date that a **junior employee** is allowed to perform service on Ticket Agent position C-C65 at Pittsburgh, Pa."

OPINION OF BOARD: This is a fitness and ability dispute in which the claimant was adjudged lacking **in** ability to handle a **temporary** position of Ticket Agent at Pittsburgh; an employee with less seniority **was** awarded the position.

The record **indicates** that the Claimant, at **the** time of the vacancy had some thirty-five years of service with **Carrier**. She had spent most of that **time** as a messenger or **janitress**. For a period of nine months she had previously worked the position in question **in** this **dispute** and for an additional **period** of some twenty months **had worked** a less demanding job as a ticket agent at another location (**both positions** had been abolished). The record indicates **further** that **Carrier** officials, in **observing** her work as a ticket agent, had come to the **conclusion** that her abilities were such that she would never be able to **master** the assignment of ticket agent. **Carrier** documented these observations and **conclusions** **in support** of its decision. No contrary evidence was furnished by Petitioner.

In disputes such as this, it **has** long been held that **Carrier** has the right to make judgments about the qualifications and abilities of applicants **for positions**. Such judgments may not be **overturned** by **Boards** such as this unless there is **convincing** evidence that the decision was arbitrary or capricious. In this dispute there is no **evidence whatever** to support the conclusion that Claimant had the requisite ability, in the face of **Carrier's** assertions to the contrary; and further, no evidence to **indicate** that **Carrier's** conclusions were arbitrary or capricious. The Claim **must** be denied.

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 **Employes involved** in this dispute are respectively **Carrier** and **Employes** 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.

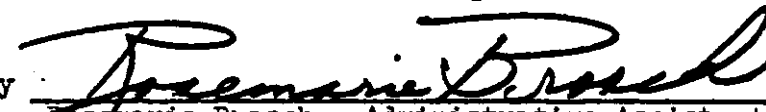
A W A R D

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 15th day of **July 1982**.

