

NATIONALRAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24193
Docket Number CL-23428

Herbert Fishgold, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, **Express** and Station **Employees**
(Illinois **Central Gulf** Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9014) that:

1. Company violated the agreement between the parties on March 8, 1979, when it refused and failed to properly award Position No. 74, in the Payroll Department to the senior applicant, Clerk Linda Brown.

2, **Company** shall now be required to compensate Clerk Linda Drown for the difference in the rate of pay attached to the position she has occupied \$68.80 per day, and **that** of Position No. 74, \$69.71 per day, beginning on March 8, 1979, and continuing for each work day, until she is allowed to occupy the position in line with her seniority.

OPINION OF BOARD: Position No.74 was posted for bidding under Bulletin No. 72 in the Payroll Department, Chicago, Illinois. Claimant, a Clerk, with a seniority date of April 15, 1968 made application for the position, but **Carrier** awarded it to Ms. D. G. Hamilton who had a seniority date of May 12, 1969. Petitioner contends in this case that claimant possessed sufficient fitness and ability for the position and based on her greater seniority should have been awarded the position and given a trial thereon as provided by Rules 6 end 10 of the Agreement.

Carrier, on the other hand, argues that claimant did not possess the necessary fitness and ability, that claimant admitted she did not have the necessary **qualifications** when bidding for the position, and that the **assignment** of the junior **employee**, who was qualified for the position, was proper in the circumstances of this case.

Rules 6 end 10 provides:

"Rule 6 Promotion

(a) **Employees** covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

(b) The word "sufficient" is intended to **more clearly** establish the right of the senior employee to bid in a new **position** or vacancy where two or more **employees** have adequate fitness and ability.

"Rule 10 Qualifying

(a) An employee awarded a bulletined position who **fails** to qualify **within** thirty working days shall retain his seniority rights **and** will be returned to his former position or status no later than thirty-six hours after removal from the position on which he failed to **qualify**. Upon return to his former position, **all** other employees effected thereby will be returned to their former positions or status. **If** his former position **has** been abolished or a senior employee has exercised displacement rights thereon, the employee may exercise displacement rights as provided in Rule 15.

(b) An employee who **acquires** a position **through** displacement rights and fails to qualify within thirty working days will be allowed seven days from date of removal in **which** to exercise displacement rights.

(c) **Employees** awarded or displacing on regular positions and employees breaking-in **on** regular positions through their **own** desire, will be given full cooperation by supervisors and other **employees in their** efforts to qualify.

(d) An employee **removed from** a position **for failure** to **qualify** within thirty working days **may**, if he so desires, handle under Rule 24 within twenty days of removal."

The Organization takes the position **that** by past **experience** claimant has clearly demonstrated her ability to learn and work other highly skilled positions without first having prior knowledge, or experience, in **a particular** Department or on a **certain** position. Therefore, the **Organization** contends, had the Carrier given her an opportunity she would have been able to **perform** the duties attached to Position No. 74 in the Payroll **Department**.

In support of its position, the Organization argues that the intent **and** purpose of both Rule 6 and 10 was to insure that an employee having adequate capacity be given an opportunity to **qualify** for the position, and that neither of the Rules require that the **most** qualified employee be **awarded** the position if the most senior employee has adequate fitness and ability **to** learn and perform the work of the position within the **qualifying** time **permitted** by **Rule 10**.

The Board has held that we do not read Rule 6 as a strict seniority **rule**; rather it is limited by the **application** of fitness and ability. **Neither** have we interpreted Rule 10 as argued by petitioner. By its very language this Rule applies only "after being awarded bulletined positions or permitted to exercise displacement rights." Such is not the case here, **and reliance** upon this **Rule** by petitioner is **misplaced**. See, e.g., Third Division Award NO. 22029.

It is well established by the Awards of this Board that Carrier has the prerogative to **determine** fitness and ability, and, when such a **determination has** been made, this Board will not disturb it unless it **appears** that the Carrier was arbitrary or **capricious** in its determination. See Awards 22029 and 11328 and those cited therein. When, as here, Carrier determines that the claimant **lacks** sufficient fitness and ability, the burden is then upon petitioner to establish Carrier's error by **substantive** evidence.

From our examination of the record in this case, petitioner has failed to meet this burden. Carrier contends that Position No. 74 requires payroll experience to perform the duties of coding and auditing Division, General Office and Executive Payrolls, and processing related correspondence. The record shows that Carrier made its selections based upon the fact that the successful applicant had 31/2 years experience in the Payroll Bureau, while claimant did not have any experience in payroll. There is no evidence to refute claimant's lack of qualifications. Moreover, there is no showing that Carrier's actions were arbitrary, capricious, biased or in any way defective. Therefore, Carrier's determination must stand and the claim mat 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.

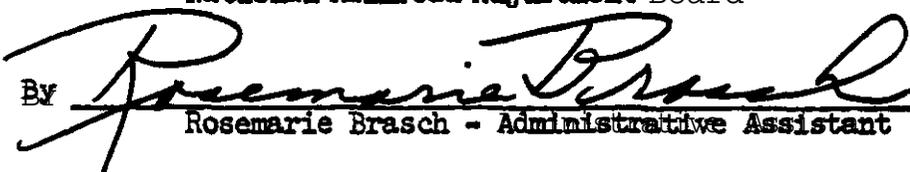
A W A R D

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 14th day of March 1983.