

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24196
Docket Number CL-24400

Ida Klaus, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station **Employees**
{ **Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9577)
that:

(1) Carrier violated the effective Clerks' Agreement when, on March 9, 1981, it failed to recognize the seniority of Clerk Barbara **Dommer** in the assignment of Position **GT-560**;

(2) Carrier shall now compensate **Ms. Dommer** for eight (8) hours' pay at the pro rata rate of Position **GT-560** for March 9, 1981, and continuing thereafter for each Saturday through Monday up to and including March 18, 1981;

(3) Carrier shall **further compensate** **Ms. Dommer** the **difference** between the pro rata and the time and one-half rate for each and every day that she performs service outside the hours and/or the work-week of Position **GT-560** from March 9 through March 18, 1981. Dates and times to be determined by a joint check of Carrier's records.

OPINION OF BOARD: In March, 1981, the **Claimant** applied for the advertised position of Janitor, for which it was specified that, "Applicant must have valid State of Indiana/Illinois driver's license".

The **Claimant was not** awarded the position. The awarding bulletin recognized her senior status but designated her "not qualified". The reason subsequently **given** for the designation was that she was **under medical restriction** against driving a Company vehicle.

In August, 1978, the Carrier's Chief **Surgeon** advised the Claimant that a recent physical examination reflected a right eye visual deficit, and informed her that she would be restricted **from** operating any Company vehicle until she could produce medical evidence that the condition had been corrected. It clearly appears that, as of the date of her **March 1981** application, she had not submitted medical evidence acceptable to the Chief Surgeon.

The **Organization** makes two contentions in support of its position that the Claimant was improperly denied the position: (1) the Claimant met the "seniority, fitness and ability" standards of the Agreement and the published requirements on the basis of seniority **ranking**, ability to perform janitorial work, and the possession of a valid driver's license. (2) The **Carrier** has failed to demonstrate a justifiable basis for disregarding her otherwise **proven** right to the position.

With particular regard to her physical qualifications, the Organization's main argument is that possession of the requisite license is conclusive proof of the Claimant's fitness to drive a Company vehicle. It has also sought to prove by further evidence, that her visual deficiency has not impaired her ability to drive. It points out that in the ten years of her Carrier service she has held jobs which required operation of a Company vehicle. It notes particularly that shortly before the denial of this assignment, and since then, she has held this very position as an extra board employee. Moreover, about five months after the denial, she was awarded the position of chauffeur, involving the delivery of mail by Company vehicle and requiring a special Chauffeur's license, which permits her to drive cars, trucks and passenger-carrying vehicles.

The Organization cites Award No. 23141 as controlling precedent for rejecting the Carrier's disqualification of the Claimant on the basis of her visual deficiency.

The Carrier urges rejection of the claim on two grounds: (1) The claim is barred from consideration because the underlying position of the validity of the medical restriction was not protested within prescribed contractual time limits. (2) The claim is without merit because the Claimant failed to meet the physical fitness requirements for the position, as evidenced by the valid 1978 determination of the Chief Surgeon.

The Carrier has acknowledged that in 1978 and 1979 the Claimant held two positions which required the use of Company vehicles. It stressed, however, that she had three accidents on those assignments, resulting in property damage, which demonstrated that she would be a threat to the safety of fellow employees and the public if she were again allowed to drive.

On careful review of the entire record, the Board has concluded that the claim is properly before us and that it should be sustained on the merits.

On the threshold question of the validity of the claim, we find that it is not barred by failure to file a timely complaint against the Chief Surgeon's restriction. The essence of the claim, as we see it, is its challenge to the denial of this particular assignment, not to the restriction as such. We turn to a consideration of the merits.

The Claimant's seniority rank and general ability to perform the required janitorial tasks are not in question. As the Claimant also satisfied the license requirement, the real issue is whether the Carrier has established that there was reasonable justification for disqualifying her on grounds of lack of physical fitness by reason of her visual deficiency.

Although we do not accept the Organization's view that possession of the license should in itself be deemed sufficient on this record to establish the Claimant's physical qualification, we cannot on this record regard the medical restriction alone as providing reasonable justification for her disqualification. There is persuasive evidence in the award of the Chauffeur position and in the Claimant's continued presence as an extra board employee in this very job that the Carrier has not felt itself bound by the restriction. Hence, it cannot now be heard to claim otherwise.

The Carrier has asserted as a further **justification** that the **Claimant** has actually **shown herself** to be **unqualified** to drive by **reason** of three accidents **in 1978** and **1979**. Although the record suggests that the accidents were not a **reason** for the disputed disqualification, we have nevertheless given that evidence careful scrutiny because of the clear importance of the safety factor **in** the operation of a vehicle. We note that the Carrier has offered no specific details as to the nature **or circumstances** of **any** of the accidents, **and** no evidence at all that the Claimant was at fault or that the Carrier believed her to be responsible for them. **And** perhaps **most** significantly, there is no **assertion** or proof of any **casual connection** between the accidents **and** the Claimant's visual deficiency. **The** Board therefore finds insufficient support **in** the record for the Carrier's statement that the **Claimant** would be a threat to the safety of fellow employees and the public if she were again allowed to drive.

In view of the foregoing, and particularly the undisputed evidence of the **Claimant's** selection for the **same** and **similar** jobs, we conclude that the **Carrier** has failed to establish reasonable **justification** for disqualification of the **Claimant** on the basis of her visual deficiency. Contrary to the Carrier's contention the disqualifying condition suggested in Award **No. 23141** has not been shown to be present here.

The claim will be sustained insofar as it alleges a **violation** of the Agreement. The **remedy** sought, however, is not an acceptable one. The claim for compensation is limited to the period ending **on March 18, 1981**, when the **Claimant's** entitlement to the Janitor position ceased **upon** her displacement. The **compensation claimed** for **that period** is for eight hours' pay at the rate of the **Janitor** position for each workday and for additional pay at time and **one** half for every day of service the Claimant **performed** "outside the hours and for the work-week" of the **position**.

The Carrier objects that the **compensation** sought is inappropriate and **amounts** to a "windfall" for **the** Claimant. We agree. We find no **National** warrant in the **nature** or circumstances of the violation or **in** the Agreement, and the Organization has offered **none**, for paying the Claimant **on any basis** other than the difference between what she would have earned had she been **awarded the** Janitor position and what she actually **earned during** the time she was entitled to occupy that position.

All **other** requests specified **in** the claim are rejected.

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 violated.

A W A R D

Claim sustained in accordance with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

