

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24459**
Docket Number **a-24376**

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and 'Station Employees
(Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9520)
that:

(a) Carrier violated the Clerical Rules Agreement effective September 1, 1946 as emended, particularly Rules 4, 7 and 16.

(b) Carrier had disqualified Mr. J. Bruno from Job No. 120, Key Entry Operator. He was not allowed a reasonable time in which to qualify (not less than ten (10) days), nor was he given fair and impartial instructions as to the duties of the position, as per Rule 7.

(c) Carrier also **would** not assign him the position as per Rule 16, Filing Applications **which** states, "**employees** filing application on other rosters will be given preference over **non-employees**, etc."

(d) Claimant was denied this position as per Rule 4 which states, "Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail." Claimant was hired as a clerk and was given a typing test and had passed same.

(e) All other employees who had bid for any key entry operator position did not have to cut a drum card but they were **shown** how and also did not have to punch 12,000 strokes per hour. The clerks in the key punch department do not work on piece **work** or on a quota.

(f) There are eighteen known **key punch operators** that were never **given** a test before they **were** awarded any position in the key punch department; they were awarded the jobs because they know how to type.

(g) That claimant, **Mr. J. Bruno**, be paid the rate of Job #120 for July 24, 1979 and all subsequent dates thereafter until this violation is corrected and discontinued and also be placed on Seniority Roster No. 2 from that date also.

OPINION OF BOARD: While working as an extra clerk in Seniority District 27, the Claimant bid for the vacancy in Job No. 120, Key Entry Operator, in Seniority District 4. His bid was made under the provisions of Rule 16, reading:

"Employees filing applications for bulletined positions on other rosters, when no applications are received from employees on such

rosters, or upon the opening of new stations or offices, will, if qualified, be given preference over **non-employees** and employees failing to bid within the time limits provided for in Rule 8. Such **employees**, when so assigned, will rank from date of assignment on new roster and shall continue to accumulate seniority for displacement purposes on their former roster.

NOTE: Question - Can a regular assigned **employee** in other districts file bids for a position and be assigned to same in other districts where a vacancy exists which has not been filled by its regular forces?

Answer - **Only** after the extra and furloughed lists have been exhausted in compliance with Rules 6 and **14.**"

The Claimant and another employee, also from another seniority district, were the sole bidders. In the course of the interview, **the** Claimant refused to take a keypunch test to establish his qualification for the bulletined job. Neither of the bidders was assigned, as indicated by the notation on the assignment bulletin stating, "**no qualified applicants**". **Two** weeks later, an outsider was hired and placed in a Key Entry Operator Job, which had also been declared as **having** no qualified bidders.

The Organization filed the instant claim on behalf of this **Claimant**. It asserted that the Claimant was qualified to work on Job No. I.20 and it charged violation of Rule **16** and of the July 22, **1971** Memorandum of Agreement.

The **Organization** makes two principal **arguments** in support of the Claimant's entitlement to the assignment: (1) Under Rule **16**, he had preference for the job over the new hire who was later placed in it. (2) Under **a** pertinent Memorandum of Agreement, he should have been given "not less than ten **(10) days**" on the job as **a** reasonable time in which to demonstrate his qualifications for the position. The Organization also considers that the attempt to require a keypunch test of the Claimant was discriminatory because it had not been **uniformly** applied in other assignments.

The Carrier contends that Position No. **120** was never filled. It asserts that the outsider was in fact hired to work as a key entry operator on Job No. 115, not on No. **120**. It also disputes the factual accuracy of the discrimination allegation. **On** the significant substantive issue, the Carrier stresses that the Claimant admitted he was not qualified for the job.

Our resolution of this dispute will not hinge on the testing issue; it is clear that some individuals were assigned without the **requirement** of taking a test and others have **been** denied key entry jobs after failing to score a satisfactory grade on a keypunch test. Also, it is not important whether the "new hire" was placed on Job No. 115 or Job No. 120. The "new hire" was placed on a vacant key entry job on August 15, **1979**, **two** weeks after the assignment bulletin on Job No. 120 **was** issued. **What** our decision will bottom on is whether or not Mr. **Bruno** possessed sufficient ability to qualify for the job sought within the time frame (10 days) provided in the **agreement**.

It is undisputed in the record that Mr. Bruno, at the time he bid on Job No. 120, could type at a rate of 40 wpm. The record also discloses that prior to and after Mr. Bruno bid on Job No. 120 he did in fact work jobs that required operation of key entry equipment similar to that required on Job No. 120. Our reading of the record leads us to conclude that Mr. Bruno possessed sufficient basic qualifications to at least be given the chance to demonstrate his ability in a ten-day trial.

Accordingly, we will hold that if Mr. Bruno is still interested in assignment to a key entry position in Seniority District 4, that he be given an opportunity to qualify thereon as provided in the Memorandum Agreement dated July 22, 1971. In the event Mr. Bruno successfully qualifies as a key entry operator he shall be compensated the difference between what he would have earned had he been assigned to Job No. 120 on August 2, 1979. (In this determination the Carrier may take credit for days Mr. Bruno did not work because he missed calls or laid off). In the event Mr. Bruno is under this Award assigned a position in Seniority District No. 4, his seniority date shall be established on the basis of an August 2, 1979 assignment by bulletin.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

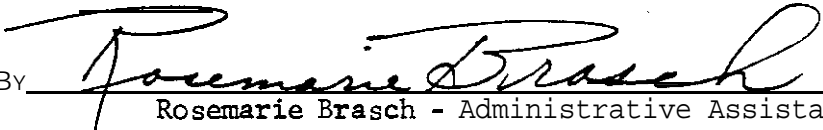
That the Agreement was violated.

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 - Administrative Assistant

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