

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24660  
Docket Number CL-24860

Robert Silagi, Referee

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

PARTIES TO DISPUTE: (

(New Orleans Public Belt Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9712)  
that:

1. Carrier violated Rules 7, 9, 10, 15, 17, among others, when it worked a **junior employe** on the **position** of Clerk Typist, M.R.B. **Accounts**, Job Code 2610.
2. The Carrier shall **now** compensate the senior furloughed clerks - P. L. Pillot, M. C. **Allmond** (**sic**), J. Cheatham, and D. J. Leonard eight (8) hours pay, pro rata beginning March 11, 1982 through March 30, 1982.

OPINION OF BOARD: The issue in this case is whether the Carrier violated the agreement when it bypassed four senior claimants and utilized a junior employe, M. J. Dietrich, to fill a position. The undisputed facts are:

Carrier is a switching and terminal railroad operating in the New Orleans **Metropolitan Area**. The Mississippi River Bridge is maintained by the Carrier under contracts with Missouri Pacific and Southern Pacific Railroads for the repair and maintenance of the railroad section only. **Carrier** repairs and maintains the highway section of the bridge under a separate contract with the State of Louisiana. Each month bills must be prepared for each of the **parties** mentioned above. The Carrier is then reimbursed for its expenses which amount to more than \$100,000 monthly. The duties of Job Code No. 2610, Clerk Typist, Mississippi River Bridge, **Accounts**, are to distribute labor and material charges on various sections of the bridge, prepare sundry bills for damages to the bridge, order material, post time cards for payroll and post and balance a stock ledger.

R. C. **Berger**, the incumbent clerk on this position, went off sick on February 22, 1982. Claimant **Allmand** was temporarily assigned to this position from March 1st to March 9th when he was furloughed. Clerk **Dumas**, whose seniority exceeds that of any claimant, was then assigned to the position. **Dumas** informed his supervisor that the work was seriously behind schedule. Accordingly, Dietrich, who had previously held this position for one year, from July 1980 to **July** 1981, was recalled from furlough to assist **Dumas** in completing the necessary reports. **Dietrich** worked from March 11th to March 19th and then returned to furloughed status. Claimant **Allmand** assisted on this position on March 25 and then Clerk **Petric**, who also has more seniority than any claimant, assisted on March 29, 30 and 31, 1982.

The Carrier asserts that **Dietrich** was the only experienced furloughed clerk who could be recalled to assist on this assignment in completing **various** accounting statements so that Carrier might receive reimbursement for its expenditures. **The** Organization alleges that **Carrier** violated five rules by making this assignment. The basic rule involved in this dispute follows:

**"Rule 7. Promotion, Assignment and Displacements**

Promotion, **assignments** and displacements shall be based on seniority (the prime consideration), fitness and ability; fitness and ability (subject to Rule **15**) being sufficient, seniority shall prevail.

Note: The **word** 'sufficient' is intended to more clearly establish the right of the **senior** employs to bid in a new position **or** vacancy where two or more **employees** have **adequate** fitness and ability."

The Carrier notes that no vacancy existed. Moreover Carrier alleges that it did comply with Rule 7 by selecting that furloughed clerk who possessed the fitness and ability to assist on Job **Code** No. 2610. In support of its position the Carrier states that:

**Pillot** (whose seniority is first among the claimants) never worked Job Code No. **2160** and, furthermore, never requested assistance in learning the duties of said position.

**Allmand** (whose seniority is second among the claimants) temporarily **worked** this position during the first part of March 1982. However his supervisor was not satisfied with **Allmand's** performance.

**Cheatham** (whose seniority is third among the claimants) **never** worked this **position at** all. **Cheatham** is not a qualified clerk typist and has no bookkeeping or accounting background.

**Leonard** (whose seniority is fourth among the claimants) held this **position** from August through October 1981. During this period Clerk **Berger**, whose desk **was adjacent** to Leonard's, daily instructed Leonard on the duties of the job. During her 3 month tenure, the stock ledger was never posted or **balanced**. In her supervisor's opinion **Leonard** was not qualified on this **position**.

The Organization cites awards to the effect that a seniority **provision** in an agreement is a limitation on the Carrier's right to operate its business. (Award 19758 - Rubenstein) and that a Carrier has an obligation to make a reasonable effort to call the senior available employe before using a junior employe to do the work (Award 15640 - Ives).

The Organization argues that at the very least the position should have been assigned to Claimant Leonard **since** she had previously worked said position for three months and had greater seniority than Dietrich. The Organization claims that the mere opinion of the supervisor is not proof that Leonard lacked ability to perform the work.

We do not agree. Disputes involving an **employee's** qualifications are not new to this Board. "[T]he awards are legion that it is the Carrier's prerogative to determine the fitness and ability of **an employee** for a particular position". (Award 23886 Sickles). "[O]nce the fitness and **ability** of an employee have been found by the Carrier to be lacking, the burden rests upon the claimant to overcome that decision by substantial and competent proof". (Award 17141). See also Award 14040 - **Dolnick**. The determination of "fitness and ability" is, in the first instance, a prerogative of management. Only if proven by a preponderance of evidence that the judgment of management was arbitrary, unreasonable or exercised to **circumvent** the agreement, will we reverse management's decision. (Award 16546 - **Dorsey**). In the instant case there is no evidence that Carrier's decision was arbitrary, capricious, unreasonable or calculated to evade the Rules.

On the record before us the Organization failed to adduce evidence of probative value that any of the four senior Claimants herein had sufficient fitness and ability to perform the particular duties of the position at the time it was awarded to Dietrich. Nor does **the** Organization deny that **Dietrich** possessed these requisites. Since we deny the claim it is unnecessary to comment upon the compensation requested as a remedy to the alleged violation.

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 **Employee** 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.

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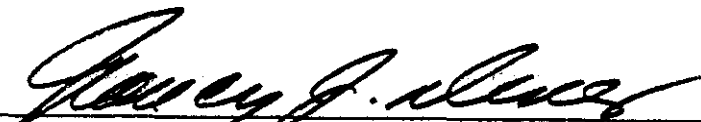
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST ::

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984

