

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24829
Docket Number CL-24576

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9578)
that:

(1) Carrier violated the Agreement between the parties when, on October 22, 1980, it assigned Mobile Agent position C-297 at Troy, Ohio, to junior employee D. L. Myers, thereby excluding senior employee T. V. Blayney, (hereinafter referred to as Claimant) who submitted a bid for the position in accordance with said Agreement, and

(2) Carrier shall be required to assign Claimant T. V. Blayney to Mobile Agent position C-297 at Troy, Ohio, and compensate him the difference in remuneration due as Mobile Agent, Troy, Ohio, and that which he earned in performance of work on other positions (plus subsequent wage increases), commencing October 22, 1980, and continuing each subsequent date.

OPINION OF BOARD: In a companion case, Award No. 24827, involving the same parties, the Board held that Carrier did not violate the Controlling Agreement, when it disqualified Claimant from the Agent-Operator's position at Troy, Ohio, on July 28, 1980. In our decision, we held that the record evidence fully supported Carrier's determination that Claimant did not perform adequately the duties of the Agent-Operator's position. In fact, we concurred with Carrier's assessment that Claimant's performance was below normative standards.

In the case before us, the issue posed is whether Carrier violated the Controlling Agreement when it assigned the Mobile Agent's position C-297 at Troy, Ohio, to a less senior employee. By way of background, Claimant was allowed to displace the incumbent of the Yard-Demurrage Clerk's position at Troy, Ohio. This occurred after he was disqualified from the Agent-Operator's position at Troy, Ohio. Subsequently, the Yard-Demurrage Clerk and the Agent-Operator's position at Troy and the Chief Clerk's position at Piqua, Ohio were abolished and two new positions were concurrently established at Troy, Ohio. These positions were the Control Agent's position C-278 and the Mobile Agent's position C-297.

Pursuant to the applicable provisions of the Controlling Agreement, Claimant submitted bids for the two positions. His first choice was for the Mobile Agent's position and his second bid choice was for the Control Agent's position. Carrier awarded both these positions to junior employees and Claimant initiated the instant grievance.

In defense of his petition, Claimant asserts that Carrier violated Agreement Rules 30, 31 and 33 which relate to promotions, assignments, displacements, vacancies and rights to promotion. In particular, he contends that he possessed the requisite fitness and ability to perform the duties of the Mobile Agent's position and argues that his performance of the Yard-Demurrage duties without

incident or complaint substantiates his position. He argues that judging his presumptive fitness and ability by his performance on the Agent-Operator's position, which was performed under the most disquieting and trying circumstances is inherently unfair since he was required defacto to perform two jobs. He avers that his long term service with Carrier and his unquestioned performance on many different jobs qualifies him for the Mobile Agent's position.

Carrier contends that he was simply not capable of performing the duties of the newly established Mobile Agent and Control Agent positions. It argues that the duties assigned to these positions included work which had previously been assigned to the Agent-Operator's position and moreover, the Mobile Agent position was responsible for the maintenance of all the outlying agencies under the jurisdiction of the Troy Agency. It asserts that his inability to perform the Agent-Operator's position, by definition, would render it more difficult for him to perform the Mobile Agent's position. It avers that Rule 30 pertaining to promotion, assignments and displacements vests Carrier with the discretion to determine fitness and ability and in the absence of a clear and persuasive finding that its personnel decision was arbitrary or capricious, it had the right to determine an employe's fitness for a position.

In our review of this case, we concur with Carrier's position. The record does not indicate that Carrier's selection decision was predicated upon any considerations of biased prejudgement or that Carrier's evaluation of his fitness was prejudicial or reflective of any personal animus. Instead, we find that Carrier's determination of his fitness and ability was based upon a studied examination of his performance record when he occupied the Agent-Operator's position and upon its correlative assessment of whether he could perform the more demanding duties of the Mobile Agent's position. Admittedly, there is a fine line at times between acceptable prerequisite fitness standards and the subjective qualifying of a personnel selection decision, but we find in this instance that Carrier's determination was based upon a more quantitative, substantive evaluative record. Since Claimant was unable to perform adequately the duties of the former Agent-Operator's position and since the new Mobile Agent's position necessitated additional duties, requiring in part the maintenance of all the outlying agencies under the Troy office's jurisdiction, it would strongly appear that he would have difficulty functioning in this position. We find no evidence that Carrier acted unfairly or in a manner calculated to harm him or benefit another employee and thus, we must conclude that its actions were in accordance with the letter and the spirit of Rule 30. We find no violation of any of the other rules cited. As we explicitly noted in Third Division Award No. 21329, we will not set aside an employer's judgement of fitness and ability unless it is arbitrary, capricious or exercised in a manner purposely designed to evert the clear intentions of the Agreement. None of these preclusive factors are present here. We will deny the claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Defer Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984.