

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25293
Docket Number CL-25047

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(Chicago. Milwaukee, St. Paul and
(Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9742) that:

"(1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it unjustly treated Employee **J. Norberg** on March 2, 1982, by disqualifying her from Time Revisor Position No. 34030.

(2) Carrier shall now be required to assign Employee **Norberg** to Time Revisor Position No. 34030 and compensate her eight (8) hours at the **pro rata** rate of Position No. 34030 for each of the dates, March 1 and 2, 1982."

OPINION OF BOARD: Claimant contends that Carrier violated the controlling Agreement when it disqualified her from Time Revisor Position No. 34030 on March 2, 1982. Immediately prior to the disqualification, Claimant with a seniority **date** of **April** 13, 1968, in Seniority District No. 4 submitted a displacement notice to Superintendent N.H. **McKegney** on February 28, 1982, expressing her intent to displace on Position No. 34030. She had previously occupied Caller Position No. 09150 until effectively displaced on March 1, 1982. By letter, dated March 2, 1982, Carrier apprised Claimant that in its opinion she did not possess sufficient fitness and ability to perform the required duties of the position; and her displacement request was denied. In addition, it declined her request for two (2) days break in training for Position No. 34030 at Carrier's expense. Claimant disputed this determination and requested on March 8, 1982, an Unjust Treatment Hearing pursuant to Agreement Rule 22(F). The hearing was held on March 23, 1982, and based upon the record transcript, Carrier concluded that she failed to establish that she was unjustly treated. This decision was appealed in accordance with Agreement Rule 22 (c) and an appeals hearing was held on April 22, 1982. Carrier sustained its prior **judgement** and a grievance Claim was filed on May 14, 1982. The parties were unable to resolve the **grievance** on the property and it was referred to the National Railroad Adjustment Board for **dispositive** resolution.

In defense of her petition, Claimant argues that Carrier failed to accord her an **opportunity** consistent with the contemplated intent of Rules 7 and 12(a) to qualify on Position No. 34030. She asserts that sufficient fitness and ability within the context of Rules 7 and 12(a) simply means that an employee must have the potential to perform all of the duties of a position within a reasonable time. She avers that Carrier permitted the employee who displaced her on Position No. 09150 two (2) days training to qualify for the position, and maintains this disparity represents discriminatory treatment. She contends that Carrier provided qualifying training to other employees in the past, which by definition and de facto practice established a precedent.

Carrier asserts that Claimant's position is unsupported by Agreement Rules since Rule 12(a), which specifically relates to displacement assignments, requires as **an** indispensable precondition that a displaced employee must be qualified, **not** qualifiable, for the sought position. It argues that Claimant was unqualified for the Time Revisor's Position and notes that she clearly recognized her lack of qualification. It observes that Rule 12(a) is noticeably distinguishable from Rule 8(a) which permits a thirty (30) days time period in which to qualify for a position, in that Rule 8(a) applied only to employees who bid for and are assigned to bulletined permanent positions **or** new positions.

In our review of this case, we agree with Carrier's position. The pivotal question herein is whether Carrier violated the Controlling Agreement when it declined Claimant's displacement request. According to Rule 12(a) which applies to displacement seniority requests, sufficient fitness and ability are explicit qualification prerequisites and the ~~employee must be~~ considered qualified for the position. Its requirements **are** pointedly distinguishable from the qualifying opportunity permitted under Rule 8(a) and it foursquarely addresses the type of situation involved in this dispute. By Claimant's own admission, she recognized that she needed training for Position No. 34030 and her apparent skills deficiency was buttressed by the observations and testimony of Carrier officials. Carrier was under no Agreement mandate to provide her training at its expense to qualify for Position No. 34030 and its declination ~~of~~ her displacement request **was** not a violation of the Controlling Agreement. As a matter of judicial necessity, we must assume that the parties understood full well the intended meaning of Rules 8(a) and 12(a) when they negotiated these provisions and were mindful of their purposeful distinguishable applications. Upon the record and for the reasons aforesaid, we do not find that Claimant was unjustly treated.

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.

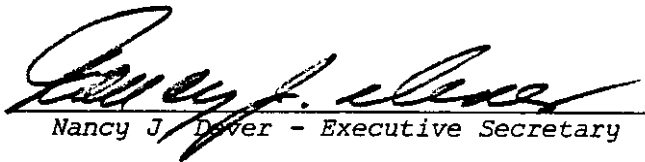
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Claim denied.

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Page 3

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By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 28th day of February 1985.