

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25338
Docket Number CL-24558

George S. Roukis, Referee

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

PARTIES TO DISPUTE: {

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-95671 that:

(1) Carrier violated the agreement between the Parties when, on July 19, 1979, after permitting employee K. A. Yarnevich to exercise seniority displacement rights on temporary **Demurrage** Clerk position C-72 at Parkersburg, West Virginia Agency. it rescinded such permission after two (2) hours of service performed thereat and denied Mr. Yarnevich a hearing in order to relate his qualification for the position, and,

(2) Because of such impropriety, Carrier shall be required to compensate Claimant K. A. Yarnevich, eight (8) hours' pay (\$67.161 for each date of July 20, 23, 24, 25, 26, 27, 30, 31; August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17 and 20, 1979, during the existence of the temporarily-vacant position.

OPINION OF BOARD: The pivotal question in this dispute is whether Carrier violated the Controlling Agreement, specifically Rule 32, when it removed Claimant from the temporary **Demurrage** Clerk's position on July 20, 1979, two hours after he commenced this assignment. The Chief Clerk at the Parkersburg, West Virginia Agency had permitted Claimant to displace on this position, but this decision was vitiated by Carrier Officer R. R. **Hosmeyer** who was located at **Grafton**, West Virginia. Superintendent **Hosmeyer** predicated his decision on the grounds that Claimant was not qualified for the position and was erroneously assigned to it.

Claimant argues that Carrier violated the Agreement when Carrier disregarded the Chief Clerk's determination of his qualification and later refused to afford him a hearing and investigation when he requested such a proceeding on July 23, 1979. He asserts that Carrier offered no evidence to prove that he was unqualified for the position or the correlative opportunity for him to demonstrate his fitness.

Carrier argues that he was not qualified for the position, but was **allowed** through error on the part of the Chief Clerk to bump the temporary vacancy on the **Demurrage** Clerks's position. It **avers** that when Superintendent **Hosmeyer** discovered this error which was **two** hours after Claimant had been on duty, the Chief Clerk was instructed to relieve Claimant from the position and pay Claimant for the entire 8 hours **work** day. It maintains that Claimant was not disqualified from the position and thus, subject to the remedial hearing provisions of Rule 32, but he was removed from the position when the **error** was **known**. It asserts that it has the authority to determine an **employee's** fitness and ability for a position and argues that Claimant failed to produce evidence indicating that he was qualified. Moreover, it contends that Organization introduced new argument and documentation in its **Ex Parte** Submission to the

Board which clearly violates the evidentiary requirement of Circular 1 and Section 153, First (i) of the Railway Labor Act. It further argues that even assuming *arguendo* the Board accepts this information, Claimant's Exhibit No. 7 is an undated form and not a genuine facsimile of Carrier's Extra Board list at the time in question. It asserts that Claimant was not on the Extra Board list during the period in question, and contends that the incident must be considered as if Claimant had never been allowed to bump on this position since the Chief Clerk's assignment was erroneous.

In our review of this case, we agree with Carrier's position. While it was indeed unsettling for Claimant to be removed from the *Demurrage* Clerk's position, his removal was not based upon his performance in that position, but upon Carrier's judgment that he was unqualified in the first instance to occupy it. In order for Rule 32, particularly paragraph (c) thereof to apply, Claimant's removal would have to be based upon his failure to meet the expected performance standards of the position, which is not the case here. He was not removed for asserted sub par performance, but solely to correct an assignment error.' In essence, Carrier's removal decision was premised upon its considered perception that he was unqualified for the position, and it was not barred from making this determination. Claimant did challenge the contractual propriety of Carrier's action, but he could not establish that it violated Rule 32 Of alternatively, that he was clearly fit to occupy the position. He introduced argument and documentation in his Submission indicating that he was presumptively qualified for the position. but this information reflects new data and it is not properly before us. (See Third Division Award Nos. 18964 and 18442.) We have no evidence that Carrier acted improperly when it removed him from the position on July 20, 1979, albeit it should have responded as a matter of courtesy to his July 23, 1979, letter, but his removal did not violate Rule 32. 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. Devor - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.