

CH
10/19
7/13
5H
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25541
Docket Number MS-25517

Stanley L. Aiges, Referee

(Dennis C. Hendry
PARTIES TO DISPUTE: (
(Seaboard System Railroad

STATEMENT OF CLAIM:

"Mr. **Hendry's** claim is based upon unjust treatment arising from his disqualification by the Seaboard System Railroad from Position No. 150, Head Timekeeper, Savannah, Georgia, in February 2, 1982, and March 23, 1982. "

OPINION OF BOARD: Claimant entered the Carrier's service as a Clerk in the Transportation Department in March, 1973. He was awarded a Head Timekeeper Position (No. 150) in the Savannah, Ga. Division Superintendent's Office on February 2, 1982. He was displaced by a senior Employee, C. E. **McWhorter**, on February 8, 1982. **McWhorter** bid off that job on February 16, 1982. The Head Timekeeper vacancy was advertised. Claimant bid for it and was awarded it effective March 8, 1982. He was trained on the job until March 23, 1982, at which time he was advised that he was disqualified due to "the numerous errors in time tickets and your apparent inability to progress the work associated with the job satisfactorily".

Claimant's central position is that he did not receive a fair chance to establish he was qualified to perform the job satisfactorily.

This Board has repeatedly and consistently held that a Carrier's determination as to an **Employee's** fitness and ability to perform a job will not be overturned unless it is established that its judgment was arbitrary, capricious or unreasonable. Third Division Award Nos. 21328; 24829; 23050; 23051; 23063; 23064; 22980. Once a Carrier has reached a determination that an Employee lacks sufficient fitness and ability, the burden falls upon the Employee to present evidence of clear probative value that he has been treated arbitrarily. The record before us does not contain adequate evidence to support the claim. **There** is no basis for overturning the Carrier's assessment of Claimant's fitness and ability. Accordingly, the claim must be denied.

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;

Award Number 25541
Docket Number MS-25517

Page 2

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985

