

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25641  
Docket Number CL-25706

Referee Stanley L. Aiges

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

PARTIES TO DISPUTE: (  
(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9853) that:

"1. The Bureau arbitrarily and in an unjust manner violated Rule 2, among others, of the agreement on March 25, 1981 when it awarded the position of Secretary in the Chicago District Office to a **non-employee over an employee, Mrs. Diane Otten.**

2. The Bureau shall now be required to assign and transfer Mrs. Diane **Otten** to the position of Secretary and pay her the rate of pay of that position in addition to any other pay she may have received during this same period. This pay is to begin on March 25, 1981 and is to continue until this violation is corrected."

OPINION OF BOARD: On March 5, 1981, the Bureau bulletined a Secretary position in its Chicago District. Claimant D. **Otten** bid for the position. On March 25, 1981, the position was awarded to M. A. **Hynes**, a non-employee at the time. The instant claim was filed to protest the Bureau's failure to award the disputed Secretary position to Claimant **Otten**.

Rule 2(h) of the Agreement provides that employees filing applications for bulletined position "will, if they possess sufficient fitness and ability, be given preference on seniority basis over **non-employees.**" It is clear that employees in the service are to be given preference **over** those who are not. **However**, it is no less clear that the requirement they be given such preference is conditional. They are entitled to such preference only "if they possess sufficient fitness and ability\* to perform the job in question.

Thus, the critical question here is whether Claimant **Otten** had "sufficient fitness and ability" to perform the disputed Secretary position.

Claimant is an experienced Secretary. She is proficient in typing and shorthand. She had held a number of secretarial positions. Over the years, she has obtained appointments to positions with increased responsibility. In 1977, she became **Administrative** Assistant to the (**then**) Director of Labor Relations, R. C. **Kniewel**. He retired in April 1980. The following month, Claimant **Otten** began a medical leave of

absence. During her leave, her Administrative Assistant position was abolished. (The effective date was July 31, 1980.) Claimant returned to work in mid-January 1981 and exercised her seniority rights to assume Position 38, Correspondence Secretary. She was holding that position when the Bureau posted the job which led to this dispute. (It is Secretary to the District Manager.)

The Bureau asserts that while Claimant's career record indicates she should have had the ability to perform as Secretary to the District Manager, her performance on her most recent assignment (i.e., Correspondence Secretary) was so poor as to reflect an "attitude problem." It was, the Bureau contends, so serious that it had reason to question her fitness and ability even to hold the Correspondence Secretary position. It simply was unwilling to promote her to an even more responsible position.

Over the years, this Board has repeatedly ruled that the Carrier has the initial responsibility for determining whether an applicant has sufficient fitness and ability to perform a job. Once such a determination has been made, we have been reluctant to overturn that judgement unless the Organization can convincingly establish it was arbitrary, capricious or unreasonable. See Third Division Award Nos. 23896, 23064, 23063, 22892, 24829, 22980.

The record reveals that Claimant Otten assumed her Correspondence Secretary position in mid-January 1981. In the next two months, several conferences were held with her to discuss her performance. Her attendance and work habits were apparently satisfactory. But her productivity and the quality of her work was noted as being "unacceptable." The reason is that there were "erratic fluctuations in work backlog and the number of errors involved in [her] work." The Bureau blamed this upon an "attitude" problem. Despite promises to get the backlog under control, Claimant had difficulty doing so. Indeed, as the record shows, backlogs continued to build up and errors increased. That led to still another conference with Claimant. Nevertheless, no meaningful improvement was shown. The Bureau by then concluded she had a serious attitude problem. Unless her performance improved, she was warned that a disqualification hearing would be conducted. Her reaction to that was characterized as "being a 'so what' response."

Under the circumstances, we cannot conclude the Bureau's denial of Claimant Otten's application for a District Manager Secretary position was arbitrary, capricious or unreasonable. On the contrary, there was ample reason to question the quality of her performance on the Correspondence Secretary position she was holding at the time. She was, in fact, on notice that she might be disqualified from it. In view of this, the Bureau had good cause to question whether Claimant could competently perform on an even-higher rated job. Concluding she could not, it denied her application for promotion on the grounds she lacked sufficient fitness and ability to perform it.

The Organization simply has not met its burden of proof here. It has failed to convince us that the Bureau's decision should be set aside. No valid ground for doing so has been established.

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

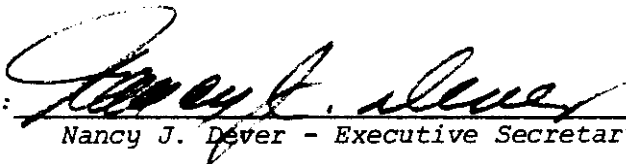
That the Agreement was not violated.

AWARD

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 September 1985.