

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25877
Docket Number CL-25508

Eckehard Muessig, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad

STATEMENT OF CLAIM: *Claim of the System Committee of the Brotherhood
(GL-9873) that:

(1) Carrier violated the agreement between the parties on December 30, 1982, when Carrier refused and failed to properly award Vacation Relief, Utility Clerk-Typist, Account Analysis, Accounting Department (Job Code No. 3121), a bulletined position, to the senior successful applicant.

(2) Company shall now be required to recognize employee Morrow's seniority and promotional rights by assigning him to position No. 3121 and compensating him for an additional day's pay at the appropriate rate for each workday he is denied his contractual rights to that position commencing Monday, January 3, 1983, and continuing each day thereafter until this dispute is settled.

(3) Company shall further be required to pay interest in the amount of nine percent (9%) per annum on all wage loss sustained as set forth under Item 2 above until the violation is corrected."

OPINION OF BOARD: This Claim arose after the Carrier selected an employee, junior to the Claimant, for the position of Vacation Relief, Utility Clerk-Typist, Accounts Analysis, Accounting Department (Job Code 3121) on December 30, 1982.

At the outset, the Board notes that it has thoroughly reviewed the Carrier's procedural contentions and we find that these do not serve to set this matter aside on that basis. Consequently, we will consider the merits.

The Claim here is essentially a "fitness and ability" dispute in which the Claimant was denied a position to which he alleges his seniority entitled him. Past Awards, applicable to the essential facts here, have consistently held, in one form or other, that "fitness and ability" means that there is a reasonable likelihood that the employee would be able to perform the duties of the position for which he bid within a reasonable timeframe. In essence, the employee must have the potential to satisfactorily perform the position for which he bids, although he may not necessarily have a history of prior position performance. It is also well established that the Carrier has the prerogative to determine the fitness and ability of an employee for a particular position and that these judgments should not be set aside lightly by arbitral decisions.

Accordingly, with the foregoing as a foundation and framework within which the issue before the Board is to be decided, we turn to the evidence properly before us.

In the situation here, the burden shifts to the Organization to show the Carrier's determination to be arbitrary and capricious. We conclude that the Organization has met the test necessary for sustaining a Claim. The controlling Rules do not require that fitness and ability be such that an employee need fully and completely perform the work immediately upon assuming the position. Here, the Carrier acknowledged in its initial denial that the "decision was made to place the most qualified clerk on this assignment in order to get the job done." Further, in this same denial letter of April 18, 1983, the Carrier referred to remarks made by the Claimant and his Supervisor when he previously worked in the same assignment as the one he now claims. These observations by the Carrier, when taken in the context of other relevant aspects of record, demonstrate not only that the Claimant had the necessary fitness and ability to perform the duties of the claimed position, but also that the Carrier recognized his qualifications. Thus, while he may not have known all the duties required of him, the Carrier improperly weighed those comments when making its fitness and ability determination. Moreover, in its denial letters on the property, the Carrier failed to substantively state a specific reason relating to fitness and ability for denying the position to the Claimant. Although the Carrier's submission to this Board does mention that the Claimant "had difficulty in balancing a simple payroll", this matter, according to the record before us, had not been raised on the property.

Since Claimant was awarded the position of Vacation Relief Clerk, Job Code No. 3121 on March 10, 1983, the claim is sustained to the extent that the Claimant will be paid the difference between what he already has been paid for the period from January 3 to March 10, 1983, inclusive (including vacation pay) and the amount Clerk M. M. Dumas was paid for the corresponding period. The Claim for interest is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and 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 violated.

A W A R D


Claim sustained in accordance with the Opinion.

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By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.