

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26003  
Docket Number CL-25217

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9773) that:

(1) The Carrier violated the Agreement, when on March 5, 1982, it failed to assign St. Albans Clerk Mr. T. Vincelletto to the Chief Clerk-Data Processing position.

(2) Claimant should now be paid eight (8) hours at straight time rate of the Chief Clerk-Data Processing assignment for March 5, 1982, and each subsequent date thereafter until violation is corrected."

OPINION OF BOARD: On January 27, 1982, a newly negotiated position of Chief Clerk-Data Processing was bulletined. A note contained on the bulletin stated:

"This is a "B" category position under Article 1.7 of BRAC working Agreement, therefore, the Carrier has the right of selection without regard to seniority."

In describing the duties of the new position, the Carrier wrote:

"Operation of a computer and its associated devices; writing new computer programs and updating existing programs; documenting data processing procedures and operations; data entry via computer terminal; supervision of clerical staff as assigned; other miscellaneous duties as may be assigned.

Successful applicant must have a basis knowledge of double entry accounting."

This claim was filed after the Carrier appointed a new hire to the Chief Clerk-Data Processing position. The Organization contends the Carrier violated the provisions of Article 1.5 when it chose a new employee rather than an employee who holds seniority under the Agreement. By way of background, Article 1, Scope Rule, has an "Exception" related to various positions listed in Articles 1.6 and 1.7. Article 1.5 provides that for certain positions of a direct and confidential nature, the selection may remain in the hands of the Carrier. The language then goes on to state in

pertinent part:

"...in selecting employees, preference shall be given to employees coming under the provisions of this Agreement."

The Carrier argues this claim is improperly before the Board because the claim for liability was limited to eight hours at the straight time rate for March 5, 1982. We disagree. A conference held by the Parties on February 3, 1983, clearly demonstrates the parties discussed all three Claimants mentioned in previous on-the-property correspondence. Furthermore, that conference evidences the Carrier fully understood the Claim was based on its disallowance of those employees for the position of Chief Clerk-Data Processing. To now argue the Claim, as submitted, was believed to be a one day time claim is simply without merit.

The Organization argues three applicants possessed the ability and qualifications for the new position. The Carrier, in responding to the initial claim informed the Organization that ten applications were received from current employees. All were interviewed, and their qualifications evaluated. The Carrier indicated none of these applicants possessed the ability of writing new computer programs as required by the bulletin. In responding, the Organization said three of the applicants had considerable education in accounting and computer sciences. The Carrier replied as follows:

"Each of the three mentioned were given an opportunity to indicate their knowledge through completing a very simple examination and each declined with the explanation that their knowledge of computer was very scant."

The Organization attacked the above statement claiming the applicants were discouraged from the taking the examination because the Controller advised them they needed six years previous experience in programming. On August 26, 1982, the Carrier, in referring to Claimant Sunderland, said he took a data processing course in Champlain College in 1979 and failed in RPG, the computer language required as a prerequisite to programming. Furthermore, the Carrier indicated Sunderland was given a copy of a simple test to take home over the weekend for study. The following Monday, he declined to take the test. Referring to Claimant Marquette, the Carrier said he advised it that it had been ten years since he had taken a course in computer science and requested a weekend to brush up. On the following Monday, the Carrier said Marquette could not remember the procedures and declined to take the test. Claimant Vincelletee was also offered the test for study, but indicated it was not worthwhile. The Carrier also denied that anyone was told that six years experience was a prerequisite.

Based on the record of evidence, this Board finds the Carrier fully understood that preference must be afforded employees coming under the Agreement. Furthermore, we view the evidence as supporting the Carrier's view the Claimant did not possess the primary skills required of the posted position. The failure of the Claimant and two other leading applicants to submit to a simple examination further supports the Carrier's position.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees with 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. Bever - Executive Secretary

Dated at Chicago, Illinois this 25th day of April 1986.