

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26344

Docket Number CL-25850

Robert W. McAllister, Referee

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

PARTIES TO DISPUTE: (

(The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9896) that:

1. In accordance with Rules 20 and 21 of the Clerical Rules Agreement effective September 1, 1946, as amended, we are appealing the decision of Supt.-Labor Relations, Mr. R. W. Roberts in his letter dated December 10, 1982 of the 'unjustly treated hearing' held on November 4, 1982 for ~~clerk-~~stenographer, Ms. D. A. Kellum.

2. Carrier had assigned another clerk Ms. Ciarcinski who is junior in seniority to Ms. Kellum to position on District No. 3 in the General Accounting Office at Pittsburgh, PA, position was advertised under Rules 6 & 16 of the Rules Agreement.

3. Ms Kellum's seniority date is April 12, 1977 and Ms. Ciarcinski's seniority date is May 24, 1978.

4. Claimant was assigned to Job 81 in the Manager Disbursement Accounting Department which is a stenographic position at the time of this vacancy and was qualified for this position because she had previously been regular assigned to Job No. 3 of the General Accounting office.

5. Carrier had also violated paragraph (b) of Rule 20 - Discipline when they did not render a decision within ten (10) days after completion of hearing. The hearing was held on November 4, 1982 and a decision was rendered on **November 16, 1982, twelve (12) days** after the hearing.

6. Carrier shall now place Ms. Kellum on Seniority District No. 3 ahead of Ms. Donna Ciarcinski."

OPINION OF BOARD: The Carrier, following the proper advertisement of Job No. 3, Stenographic-Clerk, Pittsburgh, Pennsylvania, assigned Clerk D. Ciarcinski to that position. Ms. Ciarcinski is junior to the Claimant. As a result, the Claimant requested a Hearing in accordance with Rule 21. This Hearing was held on November 4, 1982. On November 16, 1982, the Claimant was informed in writing that she failed to provide sufficient facts to support the Claim of unjust **treatment**.

The Organization argues the record clearly establishes the Claimant possessed the "fitness and ability" to handle the bulletined position in that she was hired for such a position in January, 1975, and worked the assignment for **two** years. The Organization further contends the Claimant has exclusively done stenography and typing work, and nothing was brought out in the Hearing about criticism of her work record.

The Carrier takes the position the bulletined job was assigned in accordance with the Agreement. The Carrier contends the Claimant did not possess the necessary fitness and ability, and it has the right to set standards and determine such fitness and ability.

Rule 4 of the Agreement reads:

"Promotion, Assignments and Displacements

Employees covered by these rules, shall be in line for promotion. Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

Note: The word 'sufficient' is intended to more clearly establish the right of the senior **employe** to bid in a new position or vacancy where two (2) or more **employees** have adequate fitness and ability."

The record of the November 4, 1982, Hearing establishes the Claimant held a statistical typist job for two years in the General Accounting Department. She was given a typing and statistical typing test at the time of her hiring. There is no evidence to rebut the strong inference she passed both. Her position at the time of the Hearing was that of stenographer.

At the Hearing, a Carrier witness insisted they had a right to test employees who bid on posted positions. Taken to its logical conclusion, this assertion is a perversion of the clear language of Rule 4 quoted above. We find that such an approach to testing could allow the Carrier to negate the threshold attained by an employee once he/she possesses sufficient fitness and ability. Accordingly, if two candidates actually possessed sufficient fitness and ability, seniority would be thwarted by arbitrarily requiring a test which could justify award of the position to the junior of the two competing employees.

In this case, the Carrier has simply failed to establish by a preponderance of probative evidence that the Claimant did not possess fitness and ability sufficient to allow her seniority to prevail.

It is this Board's opinion, therefore, that Claimant is to be afforded a seniority date identical to that of Ms. D. **Ciarcinski's** in Seniority District No. 3 with the understanding that Claimant is senior to Ms. Ciarcinski in District No. 3.

Given this conclusion, **the** Board finds it unnecessary to comment on the Organization's substantive procedural Claims.

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 **Employes** involved in this dispute are respectively Carrier and Employes 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.