

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26370

Docket Number MS-26224

Herbert L. Marx, Jr., Referee

(J. H. Johnson

PARTIES TO DISPUTE: (

(The Atchison Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of J. H. Johnson that:

(a) Carrier violated the rules of the current Clerks' Agreement at Los Angeles, California, commencing May 19, 1983, when it wrongfully disqualified Mr. J. H. Johnson from Steno to Agent, Position 6153, and

(b) Claimant Johnson shall now be returned to Position 6153, Steno to Agent, and be compensated eight (8) hours' pay at the pro rata rate of \$95.33 for each work day Claimant is wrongfully withheld from Position 6153, in addition to any other compensation Claimant may have received, including interest payable at the prevailing prime rate, as a result of such violation of Agreement rules."

OPINION OF BOARD: Claimant exercised his rights to displace a" employee on Position No. 6153, Steno to Agent. Prior to being placed in the position, the Claimant was give" a stenography test, which he passed. According to the Carrier, the Claimant was give" five days as a break-i" period and subsequently served in the position for an additional eight days.

The Carrier determined that the Claimant was unable to perform the work and was not qualified therefor. Claimant was afforded a" informal hearing, accompanied by Organization Representatives, and was thereafter disqualified and removed from the position.

The record shows an extensive presentation by the Carrier as to the Claimant's unsatisfactory performance in stenography and his failure to perform other portions of his responsibilities i" a" acceptable manner. The Claimant disputes these contentions in great detail. The Board determines, however, that the Carrier's judgment that the Claimant was not able to meet the requirements of the position was well founded.

This sequence of events occurred under Rule 9, which reads as follows:

"RULE 9 - - QUALIFYING

9-A. Employees with sufficient fitness and ability will, when bidding on bulletined positions, transferring, exercising displacement rights and/or when recalled for a new position or bulletined vacancy, be allowed 45 working days in which to qualify, and failing, shall retain all their seniority rights and may bid on any bulletined position but may not displace any other employe.

9-B. When it **is** decided, following informal hearing with employee involved, that the employee is not qualified for position to which assigned, **he** may be removed **therefrom** before the expiration of 45 working days. At such informal hearing the employee may be represented by his duly accredited representative or an employee of his craft. The informal hearing shall be held within three days from date employee is notified unless a longer time is agreed to. The right of appeal from Management's decision is recognized.

9-c. Cooperation will be given employees by all concerned in their efforts to qualify. If management requires an employee to break-in on a **position** to which he **is** assigned for the purpose of familiarization or if the employee requests break-in time and **it** is granted by Management, the employee will receive the rate of the position. All **break-in time** must be for a full eight hours and during the regularly assigned hours of the position. As of the date the break-in commences, such employee will be considered as the occupant of the position. Management will determine the total number of break-in days required. The number of days allowed hereunder will not be counted as part of the 45 working days referred to in this Rule 9. During the break-in period, an employee will not be considered available under Rule **14-C.(2)** nor will he be diverted under Rule 32-N.

Y-D. Employees who are disqualified under Rule 9 (on other than temporary vacancies) shall thereafter be considered off-in-force-reduction and subject to the provisions of Rule 17.

Y-E. An employee **who** fails to qualify on a temporary vacancy shall return to his regular position.-

Numerous Awards have supported **the view** that a Carrier's determination of an employee's fitness and ability to perform an assignment may not be **overturned** unless it is found to be arbitrary and unreasonable. Nothing in the record indicates that the Carrier acted improperly in the **exercise** of its judgment in this instance. There is also no support for the view that an employee must be given the entire qualifying period. This is explicitly set forth in Rule 9-B. The Claimant's extensive explanations of his conduct do nothing to offset these conclusions.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Nancy J. Déver - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.