

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(The Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10123) that:

(1) Carrier violated the rules of the current Clerks' Agreement at Chanute, Kansas commencing August 6, 1985, when it wrongfully disqualified D. R. Shepard from Control Clerk Position No. 6290, and

(2) Claimant D. R. Shepard shall now be returned to Control Clerk Position No. 6290 and compensated eight (8) hours' pay at the pro rata rate of \$101.43 for each work day Claimant is wrongfully withheld from Control Clerk Position No. 6290, in addition to any other compensation Claimant may have received as a result of such violation."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Upon being displaced from his position, Claimant attempted to displace on a currently occupied Control Clerk position. The Carrier states without contradiction that the bulletin for this position calls for the applicant to be a qualified typist and stenographer. Upon the Claimant's request to displace, he was given typing and stenography tests. There is no dispute that he failed to pass both tests.

Rule 9-Qualifying reads in pertinent part as follows:

"9-A. Employes 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 employee."

As such rules have been previously interpreted, the prerequisite to a fixed period in which employees may "qualify" is that they come to the position with "sufficient fitness and ability." The Carrier determined here, based on the Claimant's deficiencies in typing and stenography, that he did not have such required skill and ability. In view of this, the Board has no basis to question the Carrier's discretionary judgment, especially where there is no dispute as to the Claimant's inability to furnish proof of the necessary skills.

The record includes varying contentions by the Organization and the Carrier as to the typing and stenography skills of the incumbent employee who would have been displaced, as well as whether or not such skills were actually employed in the position. Without resolving such differing contentions, the Board nevertheless concludes that the Carrier's action was in line with its established criteria for the position and was not shown to be arbitrary or discriminatory. As stated in Third Division Award 26370:

"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."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.