

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10080) that:

1. Carrier violated the rules of the current Clerks' Agreement at Topeka, Kansas commencing October 30, 1984 when it wrongfully disqualified Joseph L. Griffin from Waybill Control Position 6648, and

2. Claimant Joseph L. Griffin shall now be returned to Position 6648 and compensated eight (8) hours' pay at the pro rata rate of \$99.67 for each work day Claimant is wrongfully withheld from Position 6648, 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.

Claimant, at the time of this dispute, occupied Waybill Control Clerk Position No. 6648. On October 23, 1984, Claimant was notified to attend a hearing to determine his qualifications on that position. As a result of that hearing, it was determined that Claimant was not able to perform the duties of his position in the 45 day qualification period.

The Organization contends that Carrier violated the Agreement between the parties by disqualifying Claimant from his position. The primary Rules cited by the Organization are Rules 5 and 9. They state, in pertinent part:

"RULE 5 - ESTABLISHMENT OF SENIORITY

5-A. New employes shall establish seniority on the seniority district in which they begin service at the time their pay starts.

Except as provided in Rule 19, employes transferring to another seniority district or off-in-force-reduction employes who are hired in another seniority district shall have their seniority in the district where employed at the time of transfer or hiring out in another seniority district, transferred and dovetailed into the district to which transferring or being hired. An employe having a seniority date dovetailed into a seniority district who has the same seniority date as another employe(s) already in the district in which the seniority is being dovetailed will have that seniority date placed immediately below such other employe(s) already in the district.

If two or more employes commence service on the same seniority district at the same time on the same date, the employing officer in conjunction with the Division Chairman shall designate their respective seniority ranking.

NOTE 1: Officials and other non-agreement covered employes holding seniority under this Agreement who are transferred from one seniority district to another will have the option to request that his seniority be brought forth and dovetailed in the new seniority district where assigned under the same principles as outlined above for other employe. If such option is not exercised within 15 calendar days then he shall retain and accumulate seniority in the seniority district where his seniority exists, subject to Rule 20-C.

NOTE 2: This Rule 5-A does not apply to employes entering the wire chief class. Employes entering the wire chief class will establish a new seniority date at the time the employe begins work in the wire chief class and shall retain and accumulate seniority where such exists."

"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 employee.

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 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 32N.

9-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).

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

The Organization argues that Carrier failed to give proper cooperation in helping Claimant to familiarize himself and qualify on Position No. 6648. It asserts that Carrier instituted an unrealistic quota that had to be performed by Claimant during his qualifying period when no such quota had been required prior to or subsequent to Claimant's occupancy of that position. In the Organization's view, Carrier's actions were arbitrary, capricious and an abuse of management discretion. For these reasons, it asks that the Claim be sustained.

Carrier, on the other hand, maintains that Claimant was properly disqualified from his position. It asserts that Claimant failed to qualify for two reasons: first he was not able to input the necessary quantity of data required and secondly, he was not able to input the data with the correctness required. It points out that the standard referred to by the Organization was decreased to 120 items since Claimant was a new Clerk. However, Carrier asserts that even that standard was not met and that there was no sign of improvement over the eight week period.

Finally, Carrier maintains that Claimant was given an additional 15 days of qualifying time which he refused. As such, it maintains that Claimant did not demonstrate the qualifications to adequately perform the duties of the position. Accordingly, it asks that the Claim be denied in its entirety.

After a review of the record evidence, the Board concludes that Claimant was given sufficient time to demonstrate his fitness and ability to perform in the position and was given full cooperation during this period. In fact, Carrier offered an additional 15 day period to qualify, which Claimant refused. Although the Organization questions the standard applied by Carrier, it is clear that Carrier has the prerogative to set appropriate standards for job classification and production.

In evaluating the question of fitness and ability, this Board has consistently adhered to the principle that Carrier has the exclusive prerogative to determine whether an employee has the necessary fitness and ability for a position. This determination once made will be sustained unless it can be established that Carrier's decision was biased, arbitrary or capricious. See Third Division Awards 21328, 20878, 20361, 17489. The Organization has the burden of establishing that Carrier's action was arbitrary or capricious. Here, there is absolutely no evidence that Carrier acted in an arbitrary, capricious or unreasonable fashion. On the contrary, Carrier's determination was based on a review of Claimant's work over an 8 week period. There is no basis for overturning its decision. As such, the Claim is denied in its entirety.

Form 1
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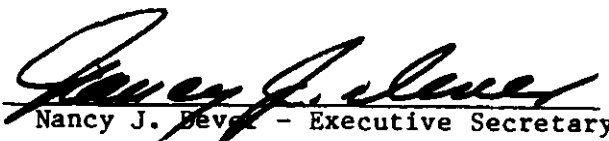
Award No. 28094
Docket No. CL-27032
89-3-86-3-73

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 11th day of September 1989.