

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Illinois Central Gulf Hospital Association

STATEMENT OF CLAIM: "Clam of the System Committee of the Brotherhood
(GL-10201) that:

1. Company violated the agreement between the parties, in particular Rules 6 and 9, when on November 13, 1986, Linda Nixon, a furloughed employee, was denied the position of Membership Services Representative in line with her seniority.

2. Company shall now pay Claimant Nixon a days' pay at the pro rata rate of Membership Services Representative, in addition to any other compensation received, beginning November 13, 1986, and continuing until such time as the Claimant is placed on the position."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The basic facts of this case are set forth as follows: On November 7, 1986, Carrier issued Bulletin No. 2 advertising for bid four (4) Membership Services Representative Positions. Said positions were later awarded to four (4) employees, one of whom possessed less seniority than Claimant herein. Claimant's seniority date was February 26, 1979, while the other employee's seniority date was January 14, 1980. It was Claimant's position that said assignment violated Rules 6 and 9 of the Agreement, since she had worked in the Membership Department and was qualified to handle the contested position.

Carrier responded that she did not possess sufficient fitness and ability to perform the job and moreover, could not become qualified within the time specified for the position. As the Claim progressed on the property, the Organization brought to Carrier's attention that the time period for qualifying had been extended and thus took issue with Carrier's selection judgment. In other words, it is asserted that extending the time period for the junior employee was presumptively unnecessary, if said employee was better qualified for the position. Later, following Carrier's denial of the Claim on March 20, 1987, and the joint conference held on April 23, 1987, Claimant personally wrote a letter to the Assistant General Manager/Treasurer, dated May 6, 1987, wherein she detailed her work experience, particularly, her services with the Membership Department. In part, she wrote,

"As I previously indicated, when I performed the Membership Services duties several years ago, it was the full range of duties. It was not necessary for me to be trained, and my performance was commended by the Supervisor. I have also performed these duties 'off and on' whenever the Membership Department would get behind. I am sure you can understand my frustration over being considered qualified several years ago, performing the duties satisfactorily, and now being found unqualified."

By letter dated May 27, 1987, the Assistant General Manager/Treasurer answered in part,

"As you provided in your letter, I have again reviewed your fitness and ability as it relates to the Membership Services Representative and find no reason to change my judgment as described in my letter of January 5, 1987 to Ms. Dorothy Busch."

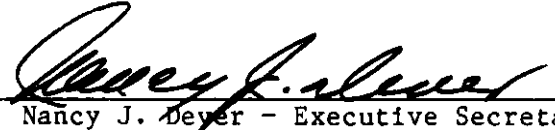
Essentially, Carrier maintained that even though Claimant worked in the Membership Department in 1982 for a total of thirteen (13) days and even though she performed limited dues processing duties, she was never qualified for the position. It also observed that since 1982, the Membership Department installed a new computerized eligibility system and developed more sophisticated administrative rules which necessitated the retraining of all personnel in the Membership Department. Further, it pointed out that the junior employee had worked almost six (6) years in the area. It recognized that Rule 9 of the Agreement provided for a thirty (30) days trial period, but argued that said Rule does not mandate or obligate it to place an employee on a position for which the employee lacks fitness and ability. It noted that of the many duties assigned to the position, Claimant performed one element of these duties for thirteen (13) days. Specifically, it asserted that she did not have sufficient overall background experience or experience handling members' correspondence by telephone and generating word processing letters by utilizing the Carrier's hardware and software, or a thorough knowledge of the Association's health plans and eligibility requirements.

In considering this case, the Board is clearly well aware of the defining requirements of Rules 6 and 9 and takes judicial notice of the many Third Division Awards addressing questions of qualifications. As a rule and in the absence of bias or a clearly visible egregious selection error, an employee must show that he or she possesses sufficient fitness or ability or a presumptive ability to become qualified within the time specified for the position. In the case herein, Carrier extended the qualifying period for the four (4) successful bidders to sixty (60) days. Thus, there was no particular favoritism accorded to the junior employee. More important, Carrier asserted that Claimant was plainly not qualified for the position and submitted sufficient evidence to establish that point. To be sure, Claimant's detailed response of May 6, 1983, raised a reasonable question of fitness, but Carrier's response, namely that Claimant's limited narrowly focused experience fell short of the qualifying prerequisite requirements appears more persuasive. Accordingly, since Carrier's affirmative defense overcame Claimant's assertions of presumptive fitness and since there is no evidence of bias when the junior employee was awarded the position and since by and large Carrier has the right to determine the fitness and ability of an employee, the Board must find for Carrier's position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1990.