

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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 Organization (GL-10364) that:

(a) Carrier violated provisions of the current Clerks' Agreement at Topeka, Kansas, on March 16, 1988, when it failed and/or refused to call Claimant Wujick to fill the short vacancy of Order Clerk Position No. 6105, and

(b) Claimant Wujick shall now be compensated eight (8) hours' pay at the pro rata rate of Position No. 6105 for each work day of the position commencing March 16, 1988, and continuing until the short vacancy here involved has expired, in addition to any other compensation Claimant may have received."

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.

At the outset, in the Submissions before the Board, we find materials and arguments raised for the first time. It is well established that issues which were not raised during the handling of disputes on the property may not be raised initially before this Board, which is solely appellate in function. Therefore, these will not be considered during our deliberations.

The substantive question in this dispute is whether the Claimant was qualified to fill a short vacancy under Rule 14-C of the parties' Agreement. Pursuant to the pertinent provision of that Rule, the Carrier must call the senior "qualified" employee to fill a short vacancy. The Carrier correctly argued on the property that to be "qualified" to protect a position, as in this case, is different than having the necessary "fitness and ability" to be assigned to a position, pursuant to Rule 9A.

The Organization, on the property, mainly contends that because the Claimant had earlier been assigned to the same position for ten days until he was displaced shows that he was qualified to perform the duties of that position.


The Board has consistently held that the Carrier's determination as to an employee's qualification will not be set aside unless a showing is made as to abuse of discretion. In the instant case, the Organization's concern is reasonable, given that the Claimant did work the position at issue for ten days. On the other hand, when he did work that position, it was only for ten days of a forty-five day period in which he was allowed to qualify under Rule 9A. The burden to show that the Claimant was qualified for the position rests with the Organization, in this instance. The fact that he work the position for ten days under the circumstances presented on the property is not sufficient proof necessary to meet this burden.

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 16th day of October 1990.