

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29738
Docket N. CL-29133
93-3-89-3-577

The Third Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10409) that:

1. The Carrier violated the rules of the current Agreement effective July 01, 1985, when it failed and refused to award the position of Computer Operator #11103 or Computer Operator #11118 located at the Soo Line Office Building, Minneapolis, MN, Seniority District No. 2, to R. M. Opalinski on February 10, 1988.
2. R. M. Opalinski be assigned to the position of Computer Operator #11103 or Computer Operator #11118 and paid at the rate of \$115.2202 per day, subject to subsequent general wage increases, in addition compensate her for loss of monies sustained by her beginning February 10, 1988, because of the Carrier's failure or refusal to assign Claimant (R. M. Opalinski) to one of the assigned positions. Claim to continue until all corrections are made."

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 employee 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 the right of appearance at hearing thereon.

The Organization contends that the Carrier violated the Agreement when it refused to award the Claimant Computer Operator Position No. 11118 or 11103. The Claimant began work for the Carrier on August 11, 1986. Prior to her employment with the Carrier, the Claimant had been employed as a Computer Operator for more than two years. On December 15, 1986, the Carrier awarded Computer Operator #11106 ('C' Position) to the Claimant, the senior qualified applicant in the District No. 2. The Claimant trained and worked at this position until March 9, 1987, when the position was abolished. On December 14, 1987, Bulletin No. 291 was issued calling for applicants for the position of Computer Operator #11103 ('C' Position). This bulletin was amended on December 15, 1987. On January 11, 1988, Bulletin No. 9 was issued, calling for applicants for the position of Computer Operator #11118 ('C' Position). The description was the same as the amendment for Position #11103. The positions were bulletined in Seniority District No. 2, and the Claimant was a Seniority District No. 2 employee.

The descriptions for Positions #11103 and 11118 read as follows:

"Applicant must be qualified computer operator, two years' experience on IBM mainframe computers. Applicant will operate computers and related equipment in compliance with prescribed methods, adjust schedules to optimize computer processing, along with other duties as assigned."

The Claimant made applications for both positions. When these positions were awarded, Carrier awarded Computer Operator #11103 and #11118 to "No Qualified Bids Received."

The Carrier filled these positions with new hires; non-employees not covered by the Agreement.

The relevant provision in the agreement to this dispute reads as follows:

"Rule 1 - Scope

(e) (3) - In filling positions designated 'C' in the listing of such positions attached as Supplement T, through bid or displacement, which are covered by this exception, the management is not required to apply the provisions of Rule 8 (Promotion, Assignments,

and Displacements). In filling these positions, preference will be given to employees in the seniority district in which the vacancy occurs."

Rule 8, Promotion, Assignments, and Displacements of the Clerks' July 1, 1985, Agreement states:

"Except as provided in Rule 1, employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE 1: The work 'sufficient' is intended to more clearly establish the right of the senior employee to a new position or vacancy where to or more employees have adequate fitness and ability. An employee shall be considered as having adequate fitness and ability when he has reasonable fitness and ability when he has reasonable fitness and ability to perform the duties of a position under proper supervision and direction, and need not have immediate fitness and ability resulting from actual past experience in performing the work incident to a particular position.

NOTE 2: The word 'promotion' as used in this rule shall be construed as meaning assignment to a position higher, lesser, or the same rate of pay, or a position having more attractive hours of service or duties."

The central issue is whether the Claimant was qualified for the position in question. The Carrier admits that Rule 1 (e) (3) requires that among qualified applicants, preference should be given to employees in the seniority district in which the vacancy occurs, and the Organization does not attempt to argue that an applicant does not need to be qualified for the position. The Carrier contends that the Claimant was not qualified for the positions in question because she lacked the two years' experience on the IBM mainframe computer.

Numerous decisions of this Board recognize that the Carrier has the right to judge employee qualification for job assignment and that this determination should be sustained unless it can be established that the Carrier's decision was biased, arbitrary or

capricious. The burden of proving this rests upon the Organization.

As evidence that the Claimant was qualified for the job, the Organization contends she held a computer operator position for the Carrier (Computer Operator #11106) from December 15, 1986, to March 8, 1987, when the position was abolished. The Carrier had not expressed any dissatisfaction with her performance in this position and if the job were not abolished, she would still be holding this position. While the Organization contends that the Claimant was never disqualified from her previous computer position, the Carrier's Vice President stated in her denial that the Carrier never considered the Claimant fully qualified based on her work at that time.

The Computer Department Director, stated in his testimony that the requirements for the computer operator position had remained the same since 1969 (that two years' mainframe experience or education are required.) He also said that the requirements were waived in 1987, when a change in policy was made that restricted hiring outside workers and this is how the Claimant was awarded Computer Operator Position #11106. The Organization contends that if the qualifications have remained the same and if the Claimant was awarded the position in the past, then she must be qualified. They argue that there is no evidence of a policy change or for how long this change was in existence.

As further evidence that the Claimant was qualified for the position, the Organization contends that she was left alone while on her previous computer operator position, and the Carrier would not have allowed this if she was not qualified. At the Unjust Treatment Hearing the Claimant stated that she had worked alone with no supervision on more than one occasion. While the Director stated at the Hearing that it would be unlikely that someone would be left alone in the computer room for an entire eight-hour shift to run the system that did not have qualifications, he also stated he could see where a situation might arise where an unqualified person might be left alone to operate equipment in the computer room.

It is undisputed that the qualifications of this job require two years' experience on IBM mainframe computers and that these qualifications weren't in effect when the Claimant held Position #11106. Moreover, it is not disputed that the Claimant does not have two years' experience on IBM mainframe computers. The Organization's evidence and arguments simply do not change this fact.

The Organization is correct that the Carrier has not provided evidence of the policy change during which time the requirement was waived or explained how long it was in effect. However, the Director testified that the requirements were the same since 1969 except for this one period, and the only exception that the Organization has brought up is the case of the Claimant. Because the Carrier waived the two-year IBM mainframe requirement does not obligate them to do it again. The Carrier retains the right to establish job requirements and qualifications.

In view of all the evidence and especially the fact that the Claimant has not shown that she has two years experience with an IBM mainframe computer, specifically required for Position #11103 and 11118, we cannot say that the Carrier's determination that she was not qualified for these positions was arbitrary or capricious. Accordingly, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.