

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 30157

Docket No. CL-28666

94-3-89-3-141

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

(Transportation Communications International  
(Union

PARTIES TO DISPUTE: (

(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) Carrier violated the effective agreement when it refused to afford Ms. L. Warren the right to demonstrate her fitness and ability on the position of Statistical Typist as the senior applicant for said position when it was advertised for bid on but rather assigned the position to an employee junior in service to Claimant, effective December 7, 1987.
- (2) Carrier shall now compensate Ms. Warren eight (8) hours' pay at the straight time rate of the position of Statistical Typist for December 7, 1987, and for each and every day thereafter that Carrier refuses to permit her the opportunity to so demonstrate her fitness and ability for this 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 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 right of appearance at hearing thereon.

On October 30, 1987, Statistical Typist, Position No. 541, was posted for bid. On November 6, 1987, Claimant (seniority date November 10, 1979), who occupied an Extra Board position, bid on the position. On November 12, 1987, Claimant took two typing proficiency tests administered by the Carrier's Personnel Department and received scores of 14.6 and 16.4 words per minute. The position was awarded to an employee who was junior in seniority to Claimant. According to the Carrier, the Statistical Typist position has had a minimum typing speed requirement of 50 words per minute since December, 1966.

Subject to a demonstration of arbitrary conduct, fitness, and ability determinations are the Carrier's prerogative. See Third Division Award 28254. Requiring Claimant to demonstrate an ability to type 50 words per minute for the Statistical Typist position is not arbitrary. When the position was posted and Claimant submitted her bid, Claimant did not demonstrate that she met that requirement.

The fact that Claimant may have demonstrated a sufficient level of proficiency many months later does not change the result. Claimant's demonstrated ability at the time the Claim arose determines the outcome of this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Linda Woods  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.