

Form 1
RECEIVED NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

Award No. 30620
Docket No. CL-30770
94-3-92-3-592

G. L. HART

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
GL-10849) that:

(1) Carrier violated the Agreement between the parties on April 24, 1989, and continuing each workday thereafter, when it refused to allow senior Clerk D. R. Henderson, the right to displace a junior clerk on Position No. 98, Record Writer, Centralia, Illinois.

(2) Carrier shall now be required to allow Clerk Henderson the right to displace and shall compensate him for the difference between the rate of the position he now occupies and that of Record Writer, Position No. 98, beginning April 24, 1989, and continuing each workday thereafter until the claim is settled."

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.

Claim was filed on June 1, 1989, contending that Claimant (now deceased) was denied the opportunity to displace a junior clerk off Position No. 89, Record Writer. (The job was actually Position No. 98, AAR Clerk.) In the handling on the property and before this Board, the Organization contended that Claimant had a 37 year work history with Carrier, possessed considerable clerical experience, had worked a variety of jobs, and stressed that if the General Foreman had taken the time to investigate Claimant's work history, he would have learned that he previously held a record writing position at a different station for approximately six or seven months. Further, the Organization noted, Claimant could operate a CRT terminal, scanner and was a typist, and heretofore was never challenged concerning his ability to competently do the work of the job assigned.

The claim was rejected on the basis that Claimant did not possess the fitness and ability for the job, commenting that his employment record did not reflect previous experience as an AAR Clerk. Further, it was noted that Claimant was told at the time he attempted to displace that he could train for the job in order to demonstrate that he had the fitness and ability, but that he declined the offer.

This Board has reviewed many fitness and ability cases where members of the Clerical craft have been denied promotions or displacements in the application of Rules identical in text to the Rules involved here - Rule 6, Promotion and Rule 10, Qualifying. It is well settled that Carrier's determinations on fitness and ability in the application of such Rules will not be disturbed unless it can be established by a preponderance of the evidence that Carrier acted arbitrarily and capriciously when the senior employee was denied the job. (See Third Division Awards 17177, 16781, 16426, 14922, and 11941, to name but five.)

In this matter it has not been established by a preponderance of the evidence that Claimant was capable of working Position No. 98. Carrier's General Foreman offered Claimant an opportunity to train for the job (under pay) so that it could be determined if he was capable of satisfying the requirements of the position. Claimant declined. Claimant had an opportunity to demonstrate his qualifications, but did not seize it. Not having accepted the opportunity to demonstrate his qualifications, he cannot now complain that the refusal to let him displace was arbitrary and capricious and in violation of Rules 6 and 10.

The claim is without merit.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.