

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30973
Docket No. CL-30044
95-3-91-3-457

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Transportation Communications International
(Union - Allied Services Division
PARTIES TO DISPUTE: (
(Western Railroad Association

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10620)
that:

- (1) The Western Railroad Association violated Rules 4, 5, and 8 among others of the agreement when it awarded Position No. 133 to a junior employee K. Pastierik seniority date April 9, 1990 in lieu of senior employee C. Thomas seniority date August 16, 1988.
- (2) The Association shall now be required to place Ms. Thomas on Position No. 133 and compensate her for the difference in rate of pay including overtime for each and every day until time as she reaches or exceed a comparative level."

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 to appearance at hearing thereon.

On May 11, 1990, Position No. 133, Record Clerk, was advertised by Bulletin No. 6. The established typing skill level the successful candidate would have to attain, 50 wpm with an accuracy ratio of 90%, was included on the bulletin.

The only applicant to bid on the position, K. Pastierik, was tested. However she failed to meet the required typing standard. Upon review of the duties, the department manager determined that the skills actually required for the Record Clerk position did not necessitate the typing standard originally set. Accordingly, the department manager lowered the standard to 40 wpm with an accuracy ratio of 80%. That decision was communicated to the District Chairman who took no exception to the lowering of the standard.

On May 18, 1990, Position No. 133 again was advertised. On this occasion, K. Pastierik, seniority date April 9, 1990, C. Thomas, seniority date August 16, 1988, and one other employee bid on the position. Prior to the second test, each of the three candidates was given the opportunity to practice typing. K. Pastierik achieved a score of 46 wpm with an accuracy ratio of 88%, while senior employee C. Thomas was able to type only at the rate of 30 wpm with an accuracy ratio of 81%. As a result, Position No. 133 was awarded to junior employee K. Pastierik.

The Organization filed a claim on behalf of C. Thomas alleging that she had been "disadvantaged" because K. Pastierik had previously taken the typing test and asserting that the senior employee should have been "allowed time in which to demonstrate her qualifications." Carrier denied the claim maintaining that each of the candidates had been given the "opportunity to practice" their typing. Carrier went on to note that:

"The agreement does not prohibit the Association from establishing standards for positions and testing applicants to determine whether they meet those standards. This is a process that historically had been followed throughout the life of the contract, including testing for the Record Clerk's position."

The claim was conferenced on the property, and subsequently progressed to this Board for final adjudication.

Rule 4 of the Agreement which covers "Assignments and Displacements," provides that promotions shall be based on "seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail." This issue is not new to the Board. In fact, it has long been held that Carrier generally has reasonable managerial discretion to determine whether a candidate possesses necessary fitness and ability for any given position. See Third Division Award 28094 and Public Law Board No. 3545, Award 3.

In addition to Agreement Rule 4, the Organization cited Rule 8, "Time in Which to Qualify." Rule 8 clearly states that a qualifying period is allowed "when an employee is entitled by bulletin" to a position. However, in this dispute Claimant failed the threshold test which was the minimal skill requirement necessary for the position. Therefore, Carrier was not obligated to afford Claimant a qualifying, or "grace" period, in which to establish necessary typing acumen.

We find that Carrier acted properly in utilizing a typing test to determine the qualifications pursuant to Rule 4. The senior qualified applicant was properly awarded the position at issue. There is nothing in Rule 8 which required Carrier to bypass appropriate testing procedures. Rule 8 applies only after an applicant passes the test, and is "awarded the position by bulletin." Based on the foregoing, this claim must be denied.

AWARD

Claim denied.

ORDER

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 26th day of July 1995.