

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31019
Docket No. MS-30724
95-3-92-3-510

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Ms. Eileen Guez
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(Metro-North Commuter Railroad Company

STATEMENT OF CLAIM:

- "1. The decisions to disqualify me from Secretary positions, in various departments, on or about October 24, 1990, August 28, 1990, March 8, 1991 and March 10, 1991 should be rescinded as the Company failed to comply with Rule 8 of the TCU agreement, and such decisions were arbitrary and incorrect.
2. The decision to prohibit me, apparently forever, from bidding for Secretary I and Secretary II positions should be rescinded as the Company failed to comply with the TCU agreement, including Rule 8, and such decision was arbitrary and incorrect."

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.

The Claimant's tenure with the Carrier began on September 11, 1989. On August 16, 1990, she was employed in the position of Secretary I in the Medical Department. On August 28, 1990 the Claimant was disqualified from this position. The disqualification notice indicated she was being disqualified because "you cannot perform job function".

On September 27, 1990, the Claimant assumed another position as Secretary I in the Controller's Office and was disqualified from this position less than a full week later for her "inability to perform statistical typing requirements".

On January 21, 1991, the Claimant secured the position of Secretary I in the Structures and Facilities Department. As in the other cases, she obtained this position by displacement. Two days later she secured, by bid, the temporary position of Secretary II in the Power Department. On February 6, 1991, she bid on another temporary position of Secretary I, which was also in the Power Department. She was disqualified from this position on March 8, 1991, and advised that Rule 8(b) required her return to her former permanent position in the Structures Department. On March 19, 1991, she was disqualified from the latter position because "she failed to demonstrate the ability to perform secretarial duties as assigned". She was told to exercise her seniority rights under Rule 8 of the Collective Bargaining Agreement.

With the exceptions of the August 28 and October 3, 1991, disqualifications, the Organization appealed the disqualifications to the Carrier's highest officer designated to handle claims by letter dated April 1, 1991. The appeals were denied. In the September 20, 1991 denial, the Carrier deemed the Claimant ineligible to bid for the position of Secretary in the future. Subsequently, the Claimant appealed the claim to the Board and the case is now before us.

The Claimant argues that the Carrier's actions were arbitrary, incorrect and in violation of provisions in Rule 8 - TIME IN WHICH TO QUALIFY - TRAINING, particularly Section (c). Rule 8 states in part:

"(a) Employees awarded bulletined positions or exercising displacement rights will, if not qualified, be allowed 30 work days in which to qualify. An employee who fails to qualify will return to his former position, unless during his absence that position was abolished or acquired by a senior employee, in which case he will exercise his seniority under Rule 16(a). Employees affected by such return will exercise seniority in the same manner. The thirty (30) work days may be extended by agreement between the Local Chairman and proper Company official.

- (b) When it is evident that an employee will not qualify for a position, after conference with the Local Chairman, he may be removed from the position before the expiration of the 30 work days. Such employee will return to his former position unless during his absence that position was abolished or acquired by a senior employee, in which case he will exercise his seniority under Rule 16(a). Employees affected by such return will exercise seniority in the same manner.
- (c) When an employee is disqualified, the Division Chairman will be notified in writing the reason for the disqualifications."

Furthermore, the Claimant holds that the Carrier's decision to prohibit her from bidding on future Secretary I and II positions is inappropriate and in violation of the Agreement.

The Carrier holds that the disqualifications of Claimant were proper and in accordance with the Agreement. In each case, the Claimant demonstrated an inability to do the job. The Carrier believes the Organization was properly notified of the disqualifications and in the first two instances did not appeal the Carrier's decision. The Carrier further contends that the Claimant had an adequate opportunity to prove her qualifications or lack thereof. Positions three and four were identical and involved a time period of more than 30 days.

Finally, the Carrier argues that their decision to preclude the Claimant from bidding on future Secretarial positions is justified in light of her demonstrated inabilities and her poor attitude in dealing with people, despite assistance and direction in both areas from the supervisory staff.

The Board has carefully reviewed the record of this case. The Carrier has substantiated its contention that the Claimant at this time does not have the ability to serve in either the Secretary I or the Secretary II position. However, the Board does not believe the Carrier can properly preclude the Claimant from bidding on Secretary I and II positions in the future. Individuals can always apply themselves and learn new skills while improving existing ones. Furthermore, Rule 8 simply does not provide for such future preclusions.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.