

Award No. 31060

Docket No. CL-30405

95-3-92-3-176

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10685) that:

- (a) Carrier violated the Agreement between the parties on July 11, 1989, when it disqualified employe Don Dunn from Position No. 1408.
- (b) Carrier shall be required to compensate Don Dunn for the difference in the rate of pay attached to the position he now occupies \$116.11 per day, and that of Position No. 1408 \$121.50 per day, beginning on July 11, 1989, and continuing for each work day, until this claim is settled and Mr. Dunn is placed on Position No. 1408."

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.

Effective May 30, 1989, the Carrier awarded Rate Specialist Position No. 1408 to Claimant, a long time employee whose seniority date is October 10, 1968. After Claimant worked Position No. 1408 for 29 work days, the Manager-Rates disqualified Claimant from the position because Claimant ostensibly failed to demonstrate sufficient fitness and ability to become qualified as a Rate Specialist.

The Organization submits that Claimant possessed sufficient fitness and ability based on his 18 years of prior experience in the Rate Department. The Organization also charges that the Carrier violated Rule 10(c) because it allegedly was uncooperative and failed to assist Claimant in his effort to qualify as a Rate Specialist.

Rules 6(a), 6(b) and 10(c) read:

"Rule 6(a)

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.

Rule 6(b)

The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.

* * *

Rule 10(c)

Employees awarded or displacing on regular positions, and employees breaking-in on regular positions through their own desire, will be given full cooperation by supervisors and other employees in their efforts to qualify."

Fitness and ability means that an employee must manifest the skill, capacity and ability to master the duties of a position within the qualifying period. Put simply, fitness and ability contemplates that an employee have the attributes and potential to become qualified for a position even though the employee may not be immediately qualified to perform the duties of the awarded position. However, an employee lacks sufficient fitness and ability if he evinces an inability to learn the duties of a position within the qualifying period provided he has been afforded reasonable assistance and training per Rule 10(c).

In this case, Claimant's prior experience in the Rate Department did not, by itself, vest him with sufficient fitness and ability. While Claimant worked as a Rate Clerk from November 1969 through January 1987, he performed mainly inbound billing duties which are significantly easier and more routine than the Rate

Specialists' primary duty to handle rates for outbound traffic. In addition, the record reflects that Claimant's performance as a Rate Clerk was average to below average since he had received at least four counselling sessions regarding deficient performance. Thus, Claimant only achieved marginal or minimum qualification as a Rate Clerk. In any event, his Rate Clerk skills were, for the most part, not compatible with the duties of a Rate Specialist. Therefore, the fact that Claimant worked as a Rate Clerk for 18 years does not raise the conclusive presumption that he possessed sufficient fitness and ability to fill the Rate Specialist position.

During the 29 work days that Claimant attempted to qualify on the Rate Specialist position, both the Rate Supervisor and another Rate Specialist worked extensively with Claimant. The Rate Supervisor closely monitored Claimant's performance and scrutinized his work. Due to numerous and serious deficiencies in Claimant's work, the Rate Supervisor constantly counselled him regarding proper procedures. The assisting Rate Specialist noted that, despite her tutoring, Claimant showed little improvement. Moreover, Claimant tended to work on the less complicated aspects of a Rate Specialist, such as collect waybills, and he left the harder tasks for her. Claimant, thus, manifested little initiative during the qualifying period.

Based on his substandard performance, the Rate Supervisor's decision to disqualify Claimant was neither arbitrary nor capricious. The Carrier gave Claimant ample opportunity to demonstrate that he could master the duties of a Rate Specialist. Instead, Claimant relegated himself to the less intricate work which did not require complicated rate applications. However, a Rate Specialist must be able to handle more than just collect waybills. In addition, Claimant committed numerous errors during the qualifying period which delayed car movement and undermined the Carrier's obligation to promptly and accurately complete billings.

Finally, since the Carrier provided Claimant with special assistance and his Supervisor closely scrutinized his work, the Carrier fully complied with Rule 10(c).

AWARD

Claim denied.

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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 1st day of September 1995.