

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31542
Docket No. CL-31951
96-3-94-3-270**

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

**(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation
((AMTRAK)**

**STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-11038) that:**

It is the claim of the District Committee that the Carrier violated the TCU/NRPC Northeast Corridor Clerical Agreement of July 27, 1976, in particular the Preamble, Rules 2-A-1, 2-A-5, 3-C-1, Training Rule and others when it arbitrarily, discriminately and disparately disqualified a senior incumbent employe from a position from upon which the Claimant had previously qualified and worked. The Carrier changed the requirements and duties of the position in question and failed to afford the Claimant training to assist in qualifying and applied new standards to the position. The Carrier deviated from its past practice and policy involving a change of duties for incumbent employes and initiated a new policy based on racial, sexual and age discrimination. Additionally, the Carrier failed to confer with the Local Chairman prior to disqualification.

On May 17, 1991, the Carrier disqualified Robert Tharp from Position AC-134 Accounting Clerk, Disbursement section of Accounts Payable, Philadelphia, PA. Robert Tharp has held AC-134 since December 5, 1989. The Carrier failed to give the Claimant the benefit of full cooperation in their effort to qualify.

The Carrier treated the Claimant disparately inasmuch as no training was afforded to enable the Claimant to either be trained on the new computer system or be trained in Data Entry. The Accounting Department implemented a new computer system for the AMS Section in 1990 and not

only afforded the incumbents training but waived the 10,000 keystroke per hour requirement. The Carrier failed to confer with the Local Chairman prior to disqualification as required. The Claimant is one of 12 employees in the Disbursement Section who were arbitrarily, discriminately and disparately treated. Nine of the Claimants are black, 8 are female and 10 are over the age of 40.

Claim is filed in behalf of Robert Tharp for immediate reinstatement to position of Accounting Clerk, Disbursement Section, also for the difference in rate of pay between Accounting Clerk rate and rate earned subsequent to disqualification, also for 8 hours pay at pro-rata rate for any time lost as a result of Carrier's actions on May 17, 1991.

Claim is filed in accordance with Rule 7-B-1, is in order and should be allowed."

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.

Claimant was employed as an Accounting Clerk in Carrier's Accounts Payable Department in Philadelphia, Pennsylvania. On April 1, 1991, Carrier advised Claimant that, because the Accounts Payable Department would be implementing an image scanning system, the Accounting Clerks would be required to pass a standard keystroke test by May 2, 1991. Carrier's letter to Claimant further advised:

"To assist you in preparing for the keystroke test we are making available several keyboards/terminals to practice on during the day every Saturday and Sunday until April 30th here in Accounts Payable. In addition, several terminals will be available during your lunch period each day. Use of these terminals for practice is voluntary and therefore you will not be entitled to compensation for time used to become qualified."

Claimant did not take the test, and on May 3, 1991, Carrier advised him that he was disqualified from his position, effective May 17, 1991.

The Organization contends that Carrier violated several provisions of the Agreement. The Organization argues that of twelve employees who were disqualified, nine were African-American, eight were women and ten were over the age of forty. The Organization contends that Carrier violated the Preamble to the Agreement by discriminating on the basis of race, sex, and age.

The Organization further argues that Carrier violated Rule 2-A-5 because it failed to confer with the Local Chairman prior to disqualifying Claimant and because it failed to give Claimant full cooperation in his efforts to qualify. The Organization maintains that Carrier improperly set an arbitrary cutoff on the keystroke test, instead of giving Claimant time on the job to demonstrate his fitness and ability.

The Organization also contends that Carrier violated the Training Rule. In the Organization's view, Carrier was required to provide Claimant with the necessary training on the job under his normal supervision and violated the Agreement by merely making terminals available for Claimant to use on his own time and without compensation.

Carrier contends that the Organization has failed to prove discrimination. Carrier maintains that Claimant was disqualified from the position because he failed the keystroke test and not because of his race, sex, or age.

Carrier urges that it has the basic management right to change the qualifications for a position in light of new technologies and that it did not act arbitrarily or capriciously in disqualifying Claimant. Carrier maintains that the Claimant knew for two or three months prior to the April 1, 1991 letter that the Accounting Clerks would

be required to qualify on keystrokes. Carrier maintains that it gave Claimant full cooperation in his efforts to qualify and complied with the Training Rule by providing terminals and keyboards on which to practice in preparation for the test.

Carrier also contends that it did not violate Rule 2-A-5. Carrier maintains that no consultation with the Local Chairman was required because Claimant was not disqualified before the end of the thirty day qualifying period. Furthermore, maintains Carrier, a conference was held.

We consider each of the Organization's contentions in turn. First, we find that the Organization did not carry its burden of proving discrimination on the basis of race, sex, or age. The mere recitation of the demographic characteristics of the employees who failed to qualify does not establish that those employees were the victims of discrimination. The number of women disqualified cannot prove that Claimant was a victim of sex discrimination because Claimant is male. Moreover, the record contains no basis for comparison of the make-up by race, gender, and age, of the entire pool that was subject to the keystroke requirement. Furthermore, there is no evidence that the keystroke test was, in any way, a pretext for discrimination and there is no evidence that the keystroke test was not job-related.

Second, we find no violation of Rule 2-A-5. That Rule provides:

“(a) Employees awarded bulletined positions or exercising displacement rights will be allowed thirty (30) days in which to qualify and failing to qualify may exercise seniority under Rule 3-C-1. . . .

(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 thirty (30) days and be permitted to exercise seniority under Rule 3-C-1. The Division Chairman will be notified in writing the reason for the disqualification.

(c) Employees will be given full cooperation of the department heads and others in their effort to qualify.”

The evidence established that Claimant was given a full thirty days to qualify.

He was advised on April 1, 1991, of the need to pass the keystroke test by May 2, 1991. Consequently, the requirement of a conference with the Local Chairman prior to an employee's removal from a position before the expiration of thirty days did not apply. When Claimant failed to pass the keystroke test, he was properly disqualified from the position.

Furthermore, we find no evidence to support the contention that the 10,000 keystroke per hour standard was set arbitrarily. We also find no evidence that Carrier failed to cooperate fully with Claimant in his efforts to qualify or that Carrier violated the Training Rule.

Carrier made Claimant aware of its plan to change to an imaging system and of the need to become keystroke qualified with ample time to do so. Carrier officially gave Claimant notice on April 1, 1991. Carrier made terminals and keyboards available for Claimant to use to prepare himself for the test.

We are not persuaded by the Organization's contention that Claimant should have been allowed to practice his keyboarding skills during working hours. The Training Rule requires payment for training time when the training is required by Carrier. In the instant case, Carrier did not require any specific training program. It merely advised Claimant that, because of changing technology, he would be expected to qualify in basic keystroke skills. Its making terminals and keyboards available did not signify a requirement that Claimant use them. Carrier merely provided the equipment for Claimant and the other employees to use at their election.

The following language of Third Division Award 29759 applies with equal force to the instant claim:

"Claimant was given sufficient opportunity to prove himself adequate for Position 063. Claimant failed to display the fundamental fitness, ability and skills which were reasonably deemed necessary. Carrier did not violate Rules 4, 5, or 8 when it declined to offer Claimant time in which to qualify for Position 063 Calculator Operator/Clerk."

For all of the foregoing reasons, the 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 25th day of July 1996.