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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32304
Docket No. CL-32978
97-3-96-3-364**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11230) that:

(a) The Carrier violated the TCU/NRPC Corporate Clerical Agreement in particular Rules 5, 8 and others when it arbitrarily and discriminately disqualified Marilyn Hutchinson, date of Hire March 14, 1973, from an RSA training class on December 16, 1994. Ms. Hutchinson did not receive the proper assistance and cooperation from the Carrier. The training class began on November 26, 1994. Ms. Hutchinson had previously been a qualified Reservation and Information Clerk.

(b) Carrier immediately restore Ms. Hutchinson to the Reservation Sales Agent position and that Ms. Hutchinson be compensated for any and all lost wages resulting from disqualification commencing January 1, 1995 and continuing until this grievance is properly adjusted.

(c) This claim be filed in accordance with Rule 25, 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 were given due notice of hearing thereon.

The record evidence reflects Claimant entered service of the Carrier as a Reservation and Information Clerk on March 14, 1973. On October 26, 1994, Claimant commenced a training class held at Carrier's Fort Washington, Pennsylvania Reservation Sales Office for the position of Reservation Sales Agent (RSA). The Board takes judicial notice of the fact that in paragraph (a) of the Statement of Claim, the Organization references the beginning date of the training class as November 26, 1994. Subsequently, in the presentation of this case before the Board, the Organization acknowledged the correct date as being October 26, 1994. Prior to being accepted for the training class in question, Claimant was unassigned as her position was scheduled to be abolished due to Carrier contracting out the work of the Data Center and thereafter closing down the Philadelphia office. Since Claimant had previously worked as a Reservation and Information Clerk in the early 1970's the RSA Training represented the opportunity for retraining for the position.

The record evidence further reflects that from the time Claimant commenced her training program and thereafter over a period of 28 actual paid training days, Claimant was late to class on five days, left class early on five days by six hours and six minutes on one of these days and by 2 hours and 33 minutes on another day and missed four days of class due to being sick. In addition, Carrier charges that in this same 28 day training period, on 11 separate occasions, Claimant was late returning from either lunch or the various break times. Carrier asserts that at the very outset of the training program, all trainees, including Claimant, were advised by both the classroom instructor and RSA Administrator of the importance of punctuality, attendance, passing of required tests and completion of homework assignments. According to Carrier, Claimant was also advised that qualifying for the RSA position would be determined by both class time and on-the-phone time in a supervised environment. Carrier argues that by her various types of absences from class on 14 of the 28 days in question or 50% of the time, Claimant failed to afford her instructor the opportunity to observe her for the purpose

of qualifying her for the RSA position. As a result, Carrier avers, it was left no other alternative, but to disqualify Claimant from the training program. By contrast, Carrier notes that all other trainees in Claimant's group of students successfully passed the training requirements and secured positions as RSAs.

The record evidence reflects Claimant was disqualified effective December 16, 1994 and that the instant claim was filed February 9, 1995. Prior to filing the claim, Claimant was placed on Medical Leave of Absence effective January 3, 1995. The record evidence further reflects that while the claim was active and still being handled on the property, Corporate Medical Director, Robert B. McLean, M.D., notified Facility Administrator, Diane Robinson, that Claimant's personal physician filed a written report wherein it was stated Claimant would not be able to return to her position and was to be considered permanently disabled. As a result, Dr. McLean apprised Robinson he was medically disqualifying Claimant from continued service on her position as of May 18, 1995. Robinson, in turn, notified Claimant by letter dated June 5, 1995 that her attending physician had determined she would not be able to return to her position and was to be considered permanently disabled. Robinson apprised Claimant that given her medical disqualification, she might want to seek an accommodation under the Americans with Disabilities Act or, in the alternative, to apply for another position other than an RSA position she felt she was qualified for. As a third option, Robinson informed Claimant she could elect to apply for permanent disability depending on years of service to either the Railroad Retirement Board or the Social Security Administration. By letter dated June 30, 1995, the Division Manager, Labor Relations, Metropolitan Division, denied the subject claim stating in pertinent part the following:

"[Claimant's] attitude and behavior during her qualifying period was not acceptable and not considerate of her fellow employees or management."

Subsequently, the claim was also denied by the Director, Labor Relations, by letter dated September 22, 1995 to the General Chairman. Thereafter, the claim was re-discussed in conference held November 22, 1995 to permit the Organization to submit documents obtained by Claimant in an attempt to justify her absences and lack of interest in the RSA training class. Carrier found these documents unpersuasive and, for the second time, Carrier denied the claim in its entirety, holding Claimant had been properly disqualified from the RSA training program and ultimately, the RSA position.

The Organization charges that Carrier failed to comply with Rule 8 of the Controlling Rules Agreement, effective September 1, 1976, in that it did not follow the contractual procedure set forth in paragraph (b) to wit: it failed to confer with the District Chairman prior to invoking the disqualification action and it failed to notify the appropriate Organization representative in writing of the reason(s) for the disqualification. The Organization alleges that the reason underlying Carrier's subsequent denials of the claim is a matter of petty pique and vindictiveness on Carrier's part, attempting to paint a negative picture of Claimant by making references to her overall attitude devoid of any probative proof in support of such allegation. The Organization argues that the disqualification of Claimant is insupportable based on her demonstrated capabilities in comparable job title positions. The Organization concedes Carrier's right to exercise managerial judgment as to qualifications, but asserts such exercise of managerial judgment must be based on rational grounds and argues that Carrier did not do this in the case at bar. The Organization maintains that Claimant, through past experience, demonstrated she possessed sufficient and adequate ability to perform the RSA position and that, under the circumstances, Carrier failed in its burden to demonstrate that Claimant, as a senior employee not used, had neither sufficient nor adequate ability to perform the job.

Even assuming arguendo, this Board was persuaded that the Organization's position should prevail, which we do not, we would find ourselves constrained to adopt the remedy sought here by the Organization because Claimant has been declared medically disqualified to perform service as a RSA. There is nothing in the record evidence before us to indicate that Claimant's disabled status has undergone a change since being declared medically disqualified in May of 1995. Accordingly, we are compelled to dismiss the subject claim, finding the issue of her first disqualification upon which the claim is predicated to be moot in light of her subsequent disqualification due to medical reasons.

AWARD

Claim dismissed.

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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 13th day of November 1997.