

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32871
Docket No. CL-33717
98-3-97-3-181

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-11712) that:

1. Carrier violated the Agreement on October 27, 1995, when the Carrier's decision upheld December 18, 1995, to disqualify Ms. P. C. Sanders on Position Chicago R01, plus all internal positions, following an unjust treatment (Rule 40) hearing on December 7, 1995.
2. Carrier shall clear Ms. Sanders record of disqualification; reinstate her on Chicago R01; and compensate her for all time lost and any other benefits she may have lost.”

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.

Carrier's Centralized Customer Service Center ("CSC") located in Jacksonville, Florida, is staffed with approximately 800 clerical employees performing "pool type" work with the same bulletined duties and the same rate of pay. Under the terms of Section 7 of a Memorandum of Agreement dated January 29, 1991, employees are provided up to four weeks of classroom training prior to their being given their actual on-the-job assignment. Additional training is also available, on an *ad hoc* basis, for individual remedial assistance and upgrading skills.

Claimant had been provided classroom training and had successfully worked as a CSC Clerk for the Detroit area.

On September 1, 1995, Claimant was awarded Relief Position Chicago R01. That job relieves three other positions, Nos. 100, 101 and 102. Claimant received nine days training on Position No. 100, ten days training on Position No. 101, and five days training on Position No. 102, for a total of 24 days additional training. On the contention that she was not qualified to work Position No. 100 (which she was scheduled to work as a relief on Saturdays) Carrier disqualified Claimant from Position R01. Claimant requested an Unjust Treatment Hearing, which was held on December 7, 1995. Following the Hearing Carrier notified Claimant that it was determined that her disqualification was not unjust.

The Organization contends that all jobs in the CSC pool are the same and that an employee who is qualified for one job must be considered as qualified for all jobs comprising the pool. In Claimant's case, the Organization notes, there never were any complaints registered concerning the quality of her work or performance on the "Detroit job." Therefore it must be assumed that she was qualified to work the jobs comprising Relief Position R01, and it was inappropriate for Carrier to disqualify her from that assignment.

The Organization further notes that Carrier is seeking to have it "both ways." It says that Carrier wants to treat all employees in the CSC Pool as qualified on all jobs when calling overtime, scheduling holiday work, blanking positions, or charging a job against an employee's claim for displacement allowance. But then it wants to impose traditional job qualification standards when an employee bids from one pool job to the

next. The Organization insists that Carrier is not privileged to impose traditional qualification standards when the work is pool type work, as is the case here.

Carrier argues that the Board has repeatedly held that Management is the sole judge of an employee's fitness and ability. In this matter it determined that Claimant lacked the fitness and ability for the job she bid on, she was properly disqualified, an Unjust Treatment Hearing was held at her request, and it was not established in the Hearing that she was unjustly treated. Accordingly, the Board may not substitute its judgment for that of Carrier, it contends, and the disqualification should not be disturbed.

Furthermore, Carrier suggests that the only reason that Claimant challenged her disqualification was because after she was taken off Relief Position R07, she was returned to second shift work and these hours "messed up her whole life style."

With regard to remedy, the Carrier notes that while the Organization has asked that she be made whole for any "time lost" there is no evidence that Claimant "lost" any time, therefore no monetary remedy is in order even if the claim had merit.

The Board finds the disqualification of Claimant to be flawed. For one thing, in this record it has not been established to our satisfaction that Claimant was unable to adequately perform the duties of the job. Instead, it seems that the Manager of the Department made a decision to effect Claimant's disqualification on the first day that she was assigned to work one of the schedules of the relief assignment, and that his determination was made on the basis of complaints he had received from Trainmasters on alleged slowness connected with just one train - the Ottawa Train. Because the position was a relief job working three different assignments each week, disqualification after the first day on the job following training seems premature.

Secondly, the Board agrees with the Organization that the jobs in the CSC are pool jobs. The duties and responsibilities of all, as noted in bulletins, are identical. Furthermore, Carrier stated in another matter that:

"Representatives bid in work days and starting time, not specific work. All representatives are used on various duties as the need arises."

Accordingly, it must be presumed that assignment on one qualifies the employee for all. And, by the same token, disqualification from one would result in disqualification from all.

The claim has merit. It will be sustained. Claimant is to be returned to Position Chicago R01 and given the necessary retraining, in accordance with existing practices, to qualify for the assignment. The request for wages lost is not granted, as there is no showing that Claimant lost any time as a result of the disqualification.

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 21st day of October 1998.