

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33992
Docket No. CL-34236
00-3-97-3-821**

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11884) that:

- (a) Carrier violated the rules of the current Clerks’ Agreement at Topeka, Kansas, commencing January 3, 1995, when it wrongfully disqualified Claimant Elliott from Rate Quote Clerk Position No. 6069, and
- (b) Claimant Elliott shall now be returned to Rate Quote Clerk Position No. 6069 and be compensated eight (8) hours’ pay at the pro rata rate of Position No. 6069 for each work day Claimant is wrongfully withheld from the position, in addition to any other compensation Claimant may have received, as a result of such violation.”

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 Claimant holds an October 8, 1973, seniority date on the Revenue & Customer Accounting Seniority District. On January 3, 1995, the Claimant was disqualified from Rate Quote Clerk Position No. 6069. This claim protests that disqualification.

The Claimant previously held Position No. 6069 from October 3 through November 7, 1994. The Claimant was temporarily occupying a Rate Clerk position and was displaced when the incumbent returned from sick leave. The Claimant then displaced to Position No. 6069 on January 3, 1995, at which time the Carrier disqualified the Claimant based on his prior performance on that position between October 3 and November 7, 1994.

The Carrier asserts that the Claimant had difficulty with the position even though previously trained. The Carrier pointed to what it saw as the Claimant's inability to properly check the correct rates because he failed to read tariff instructions applying incorrect increases; difficulty locating ATSF points on ATSF maps; difficulty ascertaining basic class rates which took an inordinate amount of time; difficulty using UFC because he failed to read commodity description which resulted in choosing wrong commodity description; failure to follow instructions for showing rates to the Rate Inspector before furnishing the same to shippers; failure to show TOFC rates to the Rate Inspector before giving them to the shipper; difficulty dealing with phone calls and difficulty with geographical locations.

The Organization asserts that the Claimant was not properly trained and points out that other employees were given extended time for training. The Carrier counters that evidence pointing out that employees who showed improvement received additional time beyond 45 days. However, according to the Carrier, supervisory review of the Claimant's progress did not show improvement and that after 30-35 days it became apparent that the Claimant did not possess sufficient fitness and ability to perform the complexities of the position.

The Carrier in the first instance determines an employee's qualifications to perform a job. That decision cannot be arbitrary. Based on the above, the Board cannot find that the Carrier's determination that the Claimant was not qualified was an arbitrary decision. The Carrier had recent experience with the Claimant in the position and had a rational basis to conclude that the Claimant could not adequately perform the duties of the position.

Form 1
Page 3

Award No. 33992
Docket No. CL-34236
00-3-97-3-821

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 19th day of April, 2000.