

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33997
Docket No. CL-34100
00-3-97-3-645**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Transportation Communications Union (GL-11833) that:

Carrier acted in an arbitrary, capricious and unjust manner when, on August 5, 1993, it denied Ms. Juanita Alexander’s bid application for Transition Team Specialist position at Ft. Worth, Texas. As a result, Carrier shall now be required to:

1. Place Ms. Alexander (Claimant) on a Transition Team Specialist position without further delay, pursuant to Memorandum of Agreement No. 55, and
2. Reimburse Claimant for any loss in compensation incurred during her disqualification.”

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 Carrier served notice on March 15, 1993, of its intent to consolidate certain functions performed on the Tulsa, Amarillo and Fort Worth Divisions into a consolidated Customer Support Center at Fort Worth. To facilitate this move, the parties agreed, as part of Memorandum of Agreement dated June 22, 1993, that the Carrier would establish 35 Transition Team Specialist positions. Assignments to these positions were to be made "in seniority order from those employees making application, subject to Rules 7 and 8."

The Carrier argues the claim as presented to the Board is improper in that the original claim made no request for compensation reimbursement. While noting this variance, the Board nevertheless finds the claim may properly be considered on its merits, at least as to the Carrier's failure to assign the Claimant to a Transition Team Specialist position.

There were more than 160 applicants, including the Claimant, for the 35 Transition Team Specialist positions. The Claimant was notified she was rejected for the position because she did not have "sufficient fitness and ability." Rule 7 states in pertinent part as follows:

"Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employee where two or more employees have adequate fitness and ability."

The right of the Carrier to determine "sufficient fitness and ability" needs no emphasis here, except to note that such determination may be challenged as to the basis of the Carrier's reasoning. Here, the Claimant requested and received a Rule 58 Unjust Treatment Hearing. Contrary to the Organization's contentions, the Board finds this Hearing was conducted in appropriate fashion.

As set forth in the Hearing, the Carrier based its finding of insufficient "fitness and ability" on the Claimant's attendance record and on her disciplinary record. The

Board finds the Organization's defense of the Claimant's attendance record to have merit. As to the disciplinary record, however, the Board concludes that the Carrier reasonably found the Claimant lacked the required "fitness and ability" for this particular assignment. This record includes two instances of verbal altercation with other employees, resulting, respectively, in a censure and a 25-day deferred and five-day actual suspension. The position sought by the Claimant involved in its essence close relationship with and training of other employees. Surely the "fitness" of the Claimant for this task could be properly questioned.

Although her seniority would otherwise entitle the Claimant to the Transition Team Specialist position, the Board finds no Rule violation in the Carrier's assessment of the Claimant's lack of "fitness and ability" for this unusual assignment of limited duration.

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.