

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35473
Docket No. CL-35943
01-3-99-3-930**

The Third Division consisted of the regular members and in addition Referee **Andrée Y. McKissick** 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-12508) that:

1. **Carrier** violated the TCU Agreement at the Fort Washington, PA. Reservation gales **Office**, on July 31, 1997, when it failed to properly award L. Seeney the position of Computer Technician I.
2. Carrier shall now be required to compensate L. Seeney the difference in pay, plus any overtime and \$5.00 for each **and every** day she is held from the position of Computer Technician I, effective July 31, 1997, the day the Claimant would have worked the job had it been properly awarded.”

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 following, Rules 1, 5 and 6, are applicable to this claim and, in pertinent part, are as follows:

“RULE 1 - SCOPE

Clerks and operators of all types of office machines who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, renditions of bills, reports and statement, handling of correspondence and similar work, making reservations and selling tickets, and employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training, such as typewriters, calculators, bookkeeping, dictation and keypunch machines and other similar equipment used in the performance of clerical work as herein defined, shall be designated as clerks.

Station and storehouse employees such as attendants, messengers, train announcers, **gatemmen**, station helpers, mail messengers, mail and baggage room employees, telephone switchboard operators, red caps and commissary employees.

RULE 5 – PROMOTION, ASSIGNMENTS AND DISPLACEMENTS

Employees covered by these rules shall be in line for promotion. Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability of applicants being **sufficient**, seniority shall prevail.

NOTE: The word “**sufficient**” is intended to more clearly establish the prior right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.

The company shall be the judge of fitness and ability, but shall not act in a capricious, arbitrary and discriminatory manner in the application of this rule. Alleged violations of this obligation may be appealed in accordance with Rule 25 (Grievances).

RULE 6 – BULLETIN AND ASSIGNMENT

- (b) Bulletined positions will be awarded to the senior qualified bidder within ten (10) calendar days following close of the advertising period, and, except when conditions beyond control of the corporation prevent, notice of award will be posted where the position was bulletined on the following Wednesday showing position, date bulletined, the name of the employee awarded the position, and the effective date of the award.
- (c) An employee awarded a bulletined position shall be transferred to such assignment within ten (10) calendar days after the date of the award. If the employee is not transferred within the specified time limits, he will be paid the higher rate of the two positions and any additional actual and necessary expenses plus \$3.00 per day for each work day that he is withheld from such assignment beyond the time limit above described.”

It is the position of the Organization that the Claimant has 22 years of seniority and has the right to bid, as the senior bidder, for the position of Computer Technician because of her seniority. Moreover, the Organization asserts that her qualifications, fitness and ability, should be judged after having 30 days to qualify, as the Rule contemplates. The Organization further points out that the Carrier is prohibited from giving the more qualified, junior employee the job because he is capable of better performing the job of Computer Technician I, instead of the senior bidder.

The Carrier rebuts the Organization’s contentions by asserting that qualifications, fitness and ability, are solely within the discretion and domain of the Carrier. Moreover, the Carrier notes that all applicants were asked the same questions during the interviews to determine their basic fitness and ability to ensure that the senior, qualified employee was awarded the position of Computer Technician I. Instead of awarding this senior bidder the advertised position, a junior employee, with better performance, was given priority. The Carrier justified its choice by asserting that management has a right to determine one’s skills, fitness and ability, for any position. The Organization rebuts this assertion by pointing out that the Qualifying Rule sets forth a 30 day period for a senior bidder to demonstrate one’s ability to qualify for a position.

The Carrier retorts by asserting that great ~~care~~**was** taken to ensure that the same questions were asked of all applicants during the interview to select the fitness and ability to perform the duties required for the Computer Technician I position. The Carrier asserts that the Claimant's background lacked any computer programming experience and it would be impossible for her to be competent to operate "the main frame or other support systems" within a 30 day training period. Based on the above, the Carrier reasons that the junior employee was then awarded the position, as the Claimant was not qualified for this particular position. Thus, the Carrier argues that its denial to the Claimant was not a product of discrimination, as the Organization asserts. In particular, the Carrier points out that its denial was not violative of Rule 5, because this Rule specifically, requires that only qualified, senior bidders should be allowed such a position. In addition, the Carrier reminds the Organization that **fitness** and ability of applicants rest solely upon the discretion of management. Consequently, the Carrier requests the Board to deny or dismiss this claim, as the burden of proof is on the Organization, which has not been met.

The Board finds that this claim **must** be denied for the following reasons. Evidence reflects that the Carrier was not capricious, arbitrary or discriminatory in its decision to deny the Claimant's bid. Here, the senior bidder was found to be unfamiliar with computer programs and could not reasonably be expected to become competent for the position of Computer Technician I within the 30 day period, as required. Thus, the Board finds that the Carrier was fair and evenhanded in its interview and in its subsequent decision to award the junior applicant the position. Clearly, fitness and ability are prerequisites on the issue of promotion to be considered with seniority. Based on the evidence presented, the Board finds that the Carrier has the inherent right to determine one's fitness for any particular job. Accordingly, the Organization did not meet its burden of proof for the aforementioned reasons.

AWARD

Claim denied.

Form 1
Page 5

Award No. 35473
Docket No. CL-35943
01-3-99-3-930

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 22nd day of May, 2001.