

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35415
Docket No. CL-35945
01-3-99-3-948**

The Third Division consisted of the regular members and in addition Referee Andr  e Y. McKissick when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12510) that:

1. Carrier violated the TCU Agreement at the Fort Washington, PA. Reservation Sales Office, on July 31, 1997, when it failed to properly award E. Gauthier the position of Computer Technician I.
2. Carrier shall now be required to compensate E. Gauthier 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 applicable Rules are, in pertinent part, 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, **gatemen**, 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 is a senior bidder with 24 years of seniority and has an unblemished record at the job. Thus, the Organization argues that the Claimant had a right to bid on an advertised position 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 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. In particular, the Carrier points out that the senior bidder admitted that she did not possess even the basics and that it would clearly require more than 30 days for her to fully qualify for the current position. Based upon this admission, the Carrier rightfully hired the qualified junior employee, with proven computer skills. Thus, the Carrier reasons that its denial of the position to the senior bidder was not discriminatory or violative of the cited Rules.

Lastly, the Carrier notes that the burden of proof is on the Organization, to prove the presence of a violation and that the Organization has failed to meet that burden.

The Board finds that this claim must be denied for the following reasons. The record reflects that the Claimant did not have sufficient knowledge of the various computer programs and lacked programming experience. In particular, the evidence reveals that the Claimant was asked questions on job content involving the main frame computer and other support systems, and was unable to answer them. As such, the Board finds that the Claimant is currently lacking fitness and ability for the position of Computer Technician I. Based upon her admission and her inability to answer specific questions on job content, the Board finds that the Claimant lacked the requisite computer skills needed to become qualified within 30-days for this position. Thus, the Carrier did not violate the cited Rules in its denial of said position to its senior bidder. In addition, the Board reiterates that it is the Carrier's right to determine the qualifications, fitness and ability, of a given candidate. Moreover, compliance of Rule 5 clearly requires that fitness and ability are prerequisites for the Carrier to permit seniority to prevail. Accordingly, the Board must deny this claim for the aforementioned reasons.

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 22nd day of May, 2001.