

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36739
Docket No. CL-37212
03-3-02-3-133

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12801)
that:

The following claim is presented to the Carrier on behalf of
Claimant Sandra Nock:

- (a) The Carrier violated the Amtrak Clerk's Rules Agreement particularly Rule 6 and other rules when it awarded the Chief Clerk position, Washington, DC, 8:30 a.m. - 5:00 p.m., pay grade 9; advertised on Bulletin #2000-02 dated 2/16/00 to junior employee Diana Bryant effective on March 1, 2000.
- (b) Claimant Nock shall now be allowed 8 hours pay at \$17.49 per hour (Grade 9) for each and every day she was held off the position plus any overtime hours worked on that position at time and one half the grade rate. Also Claimant should be allowed overtime rate for all hours she worked outside of the hours of 8:30 a.m. - 5:00 p.m. on account of this violation.
- (c) Claimant is senior and meets the qualifications in the bulletin. She bid on the position in the proper manner and should have been awarded the position according to the current Agreement.

- (d) This claim has been presented according to Rule 25 and should be allowed."

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 has been employed by the Carrier as a Statistical Clerk since April 1973. At the time of this dispute, the Claimant had been bumped from her Statistical Clerk's position and bid on a Chief Clerk position. The Chief Clerk position was established by combining three partially excepted positions into one bid and bump position. The Claimant held one of the abolished positions. When the job was posted, the Claimant and two other former PEP employees were told there were two tests added to the job requirements. The Claimant took the Microsoft Word test, but refused to take the written test. The position was awarded to Diana Bryant, a less senior employee than the Claimant. Bryant completed the Microsoft Word test, as well as the written test. She passed both tests. As a result of the position being awarded to a junior employee, a claim was filed on April 26, 2000, on behalf of the Claimant, Sandra Nock. The claim was sent to Hazel Norris, Manager Info Tech, 10 G Street N.E. Washington, DC. On August 22, 2000, the claim was denied by Norris. The following letter was sent to Kevin O'Connell, the Organization's District Chairman:

**"NATIONAL RAILROAD PASSENGER CORPORATION
INTEROFFICE MEMORANDUM**

August 22, 2000

Mr. Kevin O'Connell
District Chairman
436 Fern Hill Lane
Chester, Pa. 19380

Mr. O'Connell:

This letter is in response to your letter dated April 26, 2000 presented as a claim on behalf of Claimant Sandra Nock;

Upon investigation with Ms. Nock's former Manager, Marie Koerner, the position was bulletined as a new position and required a proficiency test. Ms. Nock and Diana Bryant both applied for the position, however, Ms. Nock refused to take the test.

Although Ms. Bryant is Junior to Ms. Nock, based on Ms. Nock refusal to take the test, Ms. Bryant was awarded the position.

Based on the above information, this claim is denied.

Sincerely,

Hazel Norris
Manager Amtrak Technology
10 G Street N.E. location: 1W154
Washington, DC 20002"

During discussion on the property, the Organization took the position that the Carrier had violated the Agreement by failing to respond to the initial claim within the 60 days required. The Carrier responded to this allegation by contending that the claim had been filed with the wrong Supervisor. Supervisor Norris had no authority to resolve it, was not the Claimant's Supervisor, and had no knowledge of the dispute at issue. The Carrier takes the position that the claim was defective at

inception, because it was filed with the wrong Supervisor. The Carrier denied the Organization time limit assertion on that basis.

The Board has reviewed the arguments pro and con on the time limit issue. The Board has concluded that the defective handling of this claim by both parties serves to negate each other's arguments on time limits. The Board therefore concludes that the case should not be decided on procedural grounds, but on the merits.

The facts of the case support the Carrier's position. The Carrier established that two additional tests were to be taken and passed by applicants for the Chief Clerk's position in order to meet the "fitness and ability" requirement. Applicants were required to take the Microsoft Word test and a written job proficiency test. The Claimant refused to take the written test. The successful applicant took both tests and passed both. The Carrier had a right to require the tests be taken by the applicants. The Claimant's refusal to take the written test eliminated her from consideration for the position. The Claimant eliminated herself from consideration by her own actions. It should have come as no surprise that she was not awarded the Chief Clerk position.

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 October 2003.