

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36793
Docket No. CL-37424
03-3-02-3-440

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-12908)
that:

1. The Carrier violated the TCU/NRPC Agreement at 30th Street Station Philadelphia, PA when it disciplined Claimant, Ms. Linda Howard, effective December 20, 2000 by disqualifying her from the position of Assignment Clerk, Symbol No. 2ASMT-N1, rate of pay Grade 8, located in the Engineering Department – 3rd Floor of 30th Street Station, Philadelphia, PA. The Claimant was qualified, and should still be considered the incumbent of this position.
2. The Carrier shall now remove the disqualification from Claimant's record, and compensate Claimant for the difference in pay between Grade 8 and any position held until claim is resolved. The Carrier shall also compensate Claimant for any overtime assignments that Claimant could have worked had the Agreement not been violated.”

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.

At the time the instant dispute arose, Claimant L. Howard was attempting to qualify on the Assignment Clerk position in the Engineering Bulletin and Assignment Office at 30th Street Station in Philadelphia, Pennsylvania. The Claimant was allowed to displace on this position on December 1, 2000, because she had previously worked in the Engineering Department from May 1, 1997 through December 14, 1999.

On December 5, 2001, the Claimant's Supervisor mailed a request to the Claimant's representative asking that the Claimant's 30-day qualification period be extended because the Claimant had limited experience with EPS (Engineering Personnel System) and also because the Claimant would be required to take unused vacation time during the qualification period. Neither the Organization nor the Claimant agreed to an extension of the qualification period. The Organization considered the Claimant as already qualified, because she held the job in the past. On December 20, 2000, the Claimant was given notice that she was disqualified from the Assignment Clerk position.

On February 15, 2001, the instant claim was filed. The Organization asserts that because (1) the Claimant held the position between May 1, 1997 and December 14, 1999 (2) she possesses sufficient fitness and ability to now perform the required work and (3) she held the position within the last year, she should be considered qualified. The Carrier asserts that the job in question is not the same position that she held a year ago. She was not fully qualified on the computer program (Engineering Personnel System) and the fact that the method of performing the work also changed requires that the Claimant's training period be extended to allow her to qualify. Because both the Organization and the Claimant objected to this continuation, the Carrier disqualified the Claimant on December 20, 2001.

The Board reviewed the record and considered the many arguments on both sides. A simple fact of this case is that the Claimant was not fully qualified when she took the job in question on December 1, 2000. She needed training to qualify on the position. Very early in the Claimant's time on the Assignment Clerk position, it was pointed out to her, as well as to the Organization, that she was going to need more training than she could receive in the 30-day period in order to qualify. The Organization as well as the Claimant objected to extending the qualification period. Based on the information the Carrier had concerning the Claimant's ability to efficiently perform the duties of the position, it disqualified her from holding the job.

A second basic fact is that the Carrier is within its rights to evaluate an employee's performance and to qualify or disqualify an employee as it deems appropriate. There is a long list of Awards supporting that concept. The Carrier is the sole judge of fitness and ability. In this instance, it concluded that the Claimant was not qualified. The Board can find no element of unreasonableness in the Carrier's decision.

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 29th day of December 2003.