

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38080
Docket No. CL-39109
07-3-05-3-587

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 TCU (NEC-2480) that:

1. The Carrier violated the TCU/NRPC NEC Agreement at 30th Street Station, Philadelphia, PA, when it failed to allow Claimant Lisa Jefferson to work a position she had been awarded in the Ticket Office at 30th Street Station in Philadelphia, PA, on Thursday, July 3, 2003.
2. Carrier shall compensate Claimant forty (40) hours at the Grade 8 rate of pay for the time period of Thursday, July 3, 2003 through Wednesday, July 9, 2003, when Ticket Office Manager refused to provide Claimant a displacement notice that Claimant needed to exercise seniority, when refused a Ticket Office position she had been awarded through the bid process.
3. The Carrier shall now compensate Claimant eight (8) hours per day at Grade 8 rate of pay, less whatever compensation was earned on other lower pay grade positions from July 10, 2003 until resolved.
4. The Carrier shall now allow Claimant to assume position she had been awarded, which was effective Thursday, July 3, 2003,

which would have occurred had the Agreement not been violated.

5. Carrier shall now provide Rail/Res-Stars training to all qualified Arrow users. Please observe that copy of this notice is being sent to the Carrier."

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 bid to Ticket Clerk position, Job Symbol 5TC-23 effective July 3, 2003, but was not allowed to assume that position because she had not passed the Rail/Res-Stars test. At issue in this dispute are Rules 1-B-1(a) and 2-A-5(a). Rule 1-B-1(a) provides, in relevant part:

"Promotion, assignment, and displacement shall be based on seniority, fitness and ability, fitness and ability being sufficient, seniority will prevail. NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employee to the position or vacancy where two or more employees have adequate fitness and ability."

Rule 2-A-5(a) provides, in relevant part:

“Employees awarded bulletined positions . . . will be allowed thirty
(30) days in which to qualify . . .”

It is apparent that when these Rules are read together, an employee need not be fully qualified to perform all of the functions of a particular position, as the employee is given 30 days in which to qualify. However, to be awarded the position, the senior bidder must have sufficient fitness and ability. If an employee may not reasonably be expected to fully qualify within the 30-day period, then the employee does not have sufficient fitness and ability. See, e.g., Third Division Award 35473. In the instant case, the record reflects that the Claimant was asked to make a basic reservation and issue a ticket and was unable to do so. We cannot say that the Carrier’s determination that the Claimant did not have sufficient fitness and ability was arbitrary or capricious.

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 21st day of February 2007.