

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38103
Docket No. CL-38564
07-3-04-3-585**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**PARTIES TO DISPUTE: (Transportation Communications International Union
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company – Western Lines)**

STATEMENT OF CLAIM:

- “(1) Carrier violated the current Collective Bargaining Agreement (CBA) (nee the SPT/TCU CBA) particularly Rules 26, 27, 33 and 41, the TOPS portion thereof, as well as others, on September 24, 2003 when it ruled that Claimant was not unjustly treated nor was he qualified to assume Position #133 Assistant Buyer at Los Angeles after the Rule 50, Unjust treatment investigation which was conducted on August 19, 2003.**
- (2) Carrier further violated the CBA rules above when it failed to allow Claimant to assume the position of Assistant Buyer #133 at Los Angeles on May 12, 2000 and instead disqualified him without just cause by letter of May 19, 2000.**
- (3) Carrier additionally violated the CBA rules above plus it violated Rules 46, 47, 48 and 50 when it refused to grant unjust treatment request when Claimant requested same as the result of being denied his seniority rights to assume Position #133 and only granted same over three years later in 2003 as the result of being ordered to provide same by the Third Division of the National Railroad Adjustment Board (NRAB) in its Award number 36577.**
- (4) Carrier shall now be required to place Mr. Mannella on Position #133 and compensate Claimant Mannella eight hours additional compensation at the rate of Position #133, Assistant Buyer (with all subsequent increases), each date beginning May 12, 2000 and**

continuing five (5) days per week, Monday through Friday until such time as Claimant is placed on Position #133.

- (5) Carrier shall further be required to compensate Claimant for any overtime allowed Position #133 from May 12, 2000 continuing each and every instance thereafter until the matter is finally resolved in Claimant's favor."

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.

On May 12, 2000, the Claimant was displaced from his Los Angeles, California, clerical position. He exercised seniority to Position No. 133, Assistant Buyer, held by junior employee M. Pefley. As background, the Claimant was advised that he was denied displacement rights over the junior employee. The Claimant made a formal request for an Unjust Treatment Hearing. The request was summarily rejected by the Carrier based on the premise it had properly assigned the junior employee to the Assistant Buyer position and that, accordingly, the Claimant's case was without merit. Following a decision in Third Division Award 36577, which ruled that an Unjust Treatment Hearing should have been afforded the Claimant pursuant to the Agreement, an Unjust Treatment Hearing was held on August 19, 2003.

By letter dated September 24, 2003, the Carrier denied that the Claimant had been unjustly treated. The major elements of that denial were stated as follows:

- "1. . . . the bulletin for this position clearly states that a requirement for this position is for prospective applicants to have a least 1 year

of service in the Supply Department, said service to be within the last 3 years immediately prior to the application.

* * *

3. Ms. Pefley's work history shows she had been employed as a Section Stockman or Material Clerk in the Supply Department for at least 18 months immediately prior to her placement on the Assistant Buyer position."

After review of all the substantively complex issues in this case, the Board finds that ultimately, the decision rests upon whether Pefley held the proper credentials for the position. The Board notes that each side has positions on the past claim, its meaning, and procedural irregularities, but the Board holds as follows.

Distilled to its essence, this claim is about the fitness and ability of an employee to hold the position of Assistant Buyer. The Carrier's requirements for the position were clearly stated in the Bulletin. The Carrier has the right to set qualifications for the position. In this specific case, such qualifications included working in the Supply Department for at least one year within the last three years prior to application. The Board notes that this requirement has been in existence for many years.

We reject the Organization's arguments that the Carrier's requirements are improper. The Carrier has the right to set reasonable requirements. Nothing in the record demonstrates that having one year of experience in the Supply Department during the last three years before application is unreasonable.

The Board notes that the Claimant had not worked one year in the Supply Department within the last three years prior to his application. He, therefore, did not meet the qualifications for the position. This would end the dispute, except for the fact that the case turns on Pefley's qualifications. The Organization argues that Pefley was given the job without working one full year in the past three years prior to her appointment. If this is the case, then the Board must look at the full qualifications of both the Claimant and Pefley.

By all the evidence of record, if neither had the requisite time qualification, then the Claimant was the more qualified. In fact, his seniority, (approximately 12 years of past experience in the Supply Department) as well as his typing experience make his

case supportable. The threshold factual dispute is clearly over Pefley's qualifications. The Board finds that the case turns on the Organization's evidence and testimony. The Board reviewed Pefley's notarized document which states:

"According to my records, from the years 1997 thru 1999 I worked in the Supply Department at Taylor Yard for approximately 11 months.

When I was told about the 1 year in the last 3 requirement I mentioned I might not meet that requirement. I was told yes I did after I was released from Injured on Duty status I placed a [bump] on Position 133, Assistant Buyer effective January 17, 2000."

Testimony at the Unjust Treatment Hearing reveals that:

"Q. And you pointed out that in fact during that previous three years according to the documents that M. Pefley provided you, which are notarized and signed by her, indicate that instead of her 11 months as she indicates, that there was actually only 10 months and 2 days . . .

A. 10 months and 2 days."

Our careful review leads to the conclusion that Pefley indicates that she "might not meet that requirement." Further, the Organization's major argument is that:

" . . . the Carrier's sole witness produced time records for Clerk Pefley which show her in the Supply Department for over a year but he neglected to show that Clerk Pefley had been injured on duty and was placed on light duty performing very minimal non-relevant duties during this period performing duties non-related to her position."

The Board finds that those records lack clarity for purposes of factual proof. They do not constitute the type of evidence necessary to contradict the Carrier's rebuttal statements. On more than one occasion the Carrier responded directly to this argument and denied that Pefley lacked the minimal qualifications. The Carrier argued that she worked in the Supply Department and was "assigned and compensated" for the necessary time requirement. The Carrier denied that Pefley engaged in non-relevant duties or performed duties not related to her position.

The Board is convinced by the full record that the Organization failed to provide the requisite proof to document that Pefley failed to satisfy the experience requirement of the bulletin for the position. The Organization did not prove that the Claimant worked outside the Supply Department during the disputed one year, or that her activities after the injury were not related to her position in the Supply Department. Accordingly, the claim must be denied for lack of proof.

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.