Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38377
Docket No.CL-39285
08-3-NRAB-00003-060149
(06-3-149)

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

PARTIES TO DISPUTE: (Transportation Communication International Union
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the TCU (GL-13122) that:

A) Please accept this claim from the committee of District #105 on behalf of Claimant Vicki Ford-Kuhn ID No. 321671, when the Carrier violated Rules 5(c), 9(a) on June 2, 2004.

B) The Carrier shall now be required to compensate Claimant eight hours at the pro-rata rate of $159.08 daily, in addition to all other monies earned starting June 3, 2004 and continuing until this violation is stopped.

C) A joint check of Carrier's records be made to determine proper Claimants and monies due if necessary."

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.

This claim involves the contention that the Carrier disregarded seniority rights in awarding a bulletined position to an employee junior in seniority to the Claimant.

By letter of January 3, 2003, the Carrier provided representatives of the Organization an advance copy of revisions to its Prerequisite Skills Testing Policy that it advised would be placed into effect April 1, 2003. The letter reads as follows:

> "Attached is an advance copy of a Carrier Notice regarding application of prerequisite skill testing requirements necessary to bid or displace to various clerical positions.
>
> CSXT is now able to provide training for skills such as Excel, Word, keyboarding, etc., both through on-site Learning Labs located in Jacksonville and through the computerized CSX Employee Gateway and "Xtreme Learning" for field employees. Employees can access the training from the company computer (intranet) or from their home computer via the world wide web (internet). Directions regarding access, training and testing are described in the attached notice.
>
> Please be advised that effective April 1, 2003, the Carrier will not be providing prerequisite skill testing for a particular position once the bulletin for that position has closed. Employees who desire to acquire the training for a prerequisite skill may do so at any time through the Employee Gateway and will be considered for prerequisite skill positions if the required test is passed prior to the close of the bulletin period.
>
> Should you have any questions regarding this Notice please contact Fran Doyle at (904) 359-XXXX, Paula Stefan at (904) 366-XXXX or myself [James C. Amidon, Sr. Director - Labor Relations]."

Among other things, the referenced Notice stated that whereas it had been a practice in bulletining positions requiring prerequisite skills to test the senior bidder after the bulletin closed, that practice created delays in awarding positions when the senior bidder failed to pass prerequisite testing. Therefore, the Notice stated, to ensure the prompt filling of bulletined vacancies that effective April 1, 2003 any employee wishing to bid one of these positions must have passed the required prerequisite test(s) prior to the close of the job bulletin. The Notice also stated that it would be the responsibility of employees to know the requirements of any position for which they were bidding and make any necessary testing arrangements prior to the closing date of a bulletin if they had not previously taken and passed required prerequisite test(s) for the advertised position.

In addition to setting forth how and in what manner employees may learn and/or improve their skills through access to the intranet and internet, the Notice stated the following with respect to it being the responsibility of employees to assure that their job history on file with the Carrier contained all appropriate test scores:

> "It will also be each employee's responsibility to make sure their job history has all appropriate test scores. If you would like to make sure your record is up to date contact Manpower Administration at RNX-322-4227, 4338 or 5437."

The claim here at issue arises from a bulletin that issued on June 3, 2004, some 18 months after the above mentioned Carrier letter of January 3, 2003 was sent to representatives of the Organization, and 15 months after the Prerequisite Skills Testing Notice was posted and placed into effect.

The aforementioned June 3, 2004 bulletin advertised a Section Storekeeper position at Walbridge, Ohio. The bulletin carried a requirement of there being a work history on file showing a passing score on the Prerequisite P&M (Purchasing and Materials Department) Oracle Test or evidence of having held a position in P&M utilizing Oracle.

In reviewing the work histories of bidders for the Section Storekeeper position the Carrier asserts that it found that the Claimant did not have the required

prerequisite skills testing information in either her PACs or personnel history file, albeit she was the senior bidder. The Carrier asserts that it therefore properly awarded the position to an employee junior in seniority to the Claimant who had a PACs history showing a passing score on the P&M Oracle Test as having been attained on June 1, 2004.

In its argument involving the claim, the Organization alleged that the Carrier qualified the Claimant on Oracle in December 1999, and that she continued to use it in her present position without complaint. This assertion is disputed by the Carrier. It submits that the Claimant's work history does not show her having become so qualified or having held a position that required knowledge of P&M Oracle functions.

The Organization also asserts in argument on the claim that it is the Carrier's responsibility to make and maintain note of all pertinent information in an employee's PACs or personal history file as the keeper of records, not that of an employee to make sure their job history has all appropriate test scores.

Contrary to the Organization's argument, the Board finds the record to support a finding that the Carrier's Prerequisite Skills Testing Policy was administered in a fair and reasonable manner and that it was not an abuse of its managerial rights or a violation of any cited Agreement Rules for the Carrier to require an employee to be responsible for ensuring that test results or prerequisite requirements are duly noted in their PACs or work history as on file with the Carrier.

The Board also finds no violation of Agreement Rule 9, "Time in Which to Qualify," as alleged by the Organization. We do not find evidentiary support in the record for the contention that even assuming, arguendo, the Claimant did not exhibit prerequisite skills in bidding the position, that she should have been awarded the position and allowed 30 days in which to qualify pursuant to provisions of Rule 9 that read in part as follows:

> "An employee awarded a bulletined position will be allowed thirty (30) days in which to qualify and failing to qualify shall within seven (7) calendar days return to his former position or forfeit all seniority."

Agreement language such as that cited above has many times been held by the Board as not requiring an employee be given a trial period or chance to demonstrate fitness and ability over a 30 day period of time when a Carrier has determined the employee does not possess the qualifications, fitness and ability to perform the job functions of a position. The 30 day period has generally been recognized as time for an employee with sufficient fitness and ability who has been awarded a position to demonstrate a capacity to fulfill the job functions of the position.

The Board is aware of the importance that seniority provisions of an agreement have in the exercise of certain rights in the employment relationship. However, it must be recognized that the parties are in agreement that seniority alone is not the sole factor in determining an employee's fitness and ability to be awarded a bulletined position, and that a junior employee with sufficient fitness and ability has a seniority right of consideration for a bulletined position over a senior employee who does not.

It has long been recognized in numerous decisions of the Board that the Carrier alone has the right to establish and maintain reasonable standards of job qualification and to judge the fitness and ability of an employee to be awarded a position so long as it does not abuse its authority in making such determinations. It has also been held that a Carrier has the right to require employees to demonstrate their aptitude and qualifications for a position by passing a qualifying test before bidding or being placed on a position. See, for example, Third Division Award 396 (March 2, 1937) wherein it was held:

> "The seniority rules of collective agreements are designed to safeguard fundamental rights of the employes, and it is important that these rules be observed carefully and in good faith. It is also important, however, that the carrier be not deprived of such discretion in choice of personnel as is reserved to the management by these very rules.
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> [While] seniority is thus to be given controlling recognition where the necessary qualifications are present, it is clear that the right of seniority is not established as an absolute right – that faithful discharge of duties, capacity for increased responsibility, and sufficiency of ability are also relevant considerations. * * * This does

> not mean, of course, that the Carrier's right to determine questions of fitness may be exercised arbitrarily, to defeat the letter or spirit of the agreement; but neither does it vest in this Board authority to substitute its judgment for that of the carrier where the rule is applied in good faith and on the basis of substantial evidence of want of fitness on the part of the particular employe who deems himself aggrieved."

Likewise in Second Division Award 2469 the Board held in relevant part as follows in denial of a claim protesting an employee's disqualification:

> "The agreement does not specifically provide for written tests to determine qualifications, and neither does it specifically prohibit such tests. To determine whether or not an employee is qualified is usually a matter of judgment by management. Management may use any number of methods to aid it in forming a judgment, and so long as the methods used are fair and reasonable, and administered without discrimination, we cannot substitute our judgment for that of management. We find in this case that management did not exercise its judgment in an arbitrary or discriminatory manner."

In making this decision the Board also finds it significant that nothing of record shows the prerequisite qualifications as advertised to have been established by the Carrier for other than valid reasons and sufficiently related to the duties of the Section Storekeeper position. Study of the record also persuades the Board that the Claimant had full opportunity under the Prerequisite Skills Testing Policy to become and show that she was fully qualified for the position. Apparently, as a matter of personal choice, the Claimant did not do so, whereas the junior employee awarded the position did so in keeping with the Prerequisite Skills Testing Policy.

It is evident that although the Claimant was the most senior applicant for the Section Storekeeper position at issue, she did not at the time possess the required qualifications and fitness as set forth in the job bulletin to be awarded the position. Consequently, the claim to set aside the Carrier's decision and compensate the Claimant for an alleged violation of the Agreement is denied.

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 December 2007.