

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40591
Docket No. CL-40427
10-3-NRAB-00003-080132**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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-13191) that:

- (1) The Carrier violated the TCU/NRPC NEC Agreement at 30th Street Station, Philadelphia, PA, when it failed to allow claimant Charles Trainer to displace into the Ticket Office at 30th Street Station in Philadelphia, PA on June 30, 2003.
- (2) The Carrier shall now compensate Claimant eight (8) hours per day at Grade 8 rate of pay, less whatever compensation was earned on other positions from June 30, 2003 until resolved.
- (3) The Carrier shall allow Claimant to exercise seniority and displace into the 30th Street Ticket Office, which would have occurred had the agreement not been violated.
- (4) Carrier shall now provide Rail/Res/Stars training to all qualified Arrow users.”

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.

In June 2003, Claimant C. Trainer was entitled to exercise displacement rights as a result of being displaced from his regular Usher Position at the 30th Street Station Ticket Office in Philadelphia, Pennsylvania. During the two-year period of time that Claimant was working as an Usher, the Carrier converted its "Arrow" reservation and ticketing system from a DOS environment to a Windows Operating System. The new system was known as Rail/Res/Stars System. Prior to the Claimant's employment as an Usher, the Claimant had worked as a Reservation Sales Agent for 11 years and had experience with the old Arrow System. Since working as an Usher, the Claimant had not received any training in the new Windows based application.

On June 30, 2003, after conversion to the new System, the Claimant attempted to displace onto a Ticket Clerk Position in the 30th Street Station. The Carrier advised the Claimant that he was required to create and modify a reservation using the new System prior to being allowed to displace the junior employee. The Claimant was provided, and failed, two opportunities to use the new System. The Carrier refused to honor the Claimant's displacement and he was forced to displace to a lower paying position, leading to the instant dispute.

The Organization contends that the Carrier violated the Agreement when it refused to allow the Claimant's displacement. According to the Organization, the Claimant should have been awarded the position and afforded up to 30 days of training, pursuant to Rules 1-B-1 and 2-A-5. As a remedy, the Organization requests that the Claimant be compensated eight hours for each day at the Grade 8 rate of pay from June 30, 2003 until the matter is resolved, less any compensation earned. In addition, the Organization asks that the Claimant be allowed to displace to the 30th Street Ticket Office. Finally, it asks that the Carrier be ordered to provide Rail/Res/Stars training to all qualified Arrow users.

Conversely, the Carrier contends that it acted properly in this matter. According to the Carrier, a candidate for a position should receive 30 days of

training provided the employee possesses the initial ability and fitness for the job in question. In the instant case, the Claimant did not possess the initial fitness and ability to be placed on the position. Therefore, it was proper for the Carrier to deny the Claimant's request to displace. His two failures using the Rail/Res/Stars System demonstrate that the Claimant was not qualified for the position. Because the burden of proof is on the Organization, the Carrier contends that the Organization cannot meet its burden of proof. The Carrier contends that it acted appropriately and asks that the claim be denied.

After a review of the evidence and positions of the parties, the Board finds that the Organization failed to meet its burden of proof. A review of the evidence shows that the Carrier provided the Claimant two opportunities, two full days apart, to demonstrate, not that he was qualified on the Ticket Clerk position, but that he had the minimal competency to simply create and modify a reservation within the Rail/Res/Stars System. If the Claimant had successfully displayed aptitude for the new System, his displacement would have been allowed and he would have been given the opportunity to qualify within the requisite 30 days. Unfortunately, he was unable to do so. We cannot find that the Carrier acted in an arbitrary, capricious, or discriminatory manner when it rejected Claimant's request for displacement. Therefore, the claim 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 27th day of August 2010.