

Award No. 6143
Docket No. CL-6103

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated rules of the Agreement by denial of the application of Mrs. Annette B. Heitz, September 27, 1949, for position SA-17, Addressograph Operator, in Shop Accountant's Office at Aurora, Illinois, advertised for applicants by Shop Accountant Coffee's Bulletin Notice No. 24 dated September 27, 1949, and assigning D. J. DeGeeter, a non-employee, to the vacancy by Notice No. 26, October 24, 1949;

(b) Claimant Heitz be assigned to the vacancy in conformity with her application, she being the senior applicant, and in conformity with the intent and purposes of the rules of the Agreement, and that she be allowed all wage loss sustained, retroactive to October 3, 1949.

EMPLOYEES' STATEMENT OF FACT: The claimant, Mrs. Heitz, was employed by Carrier on March 31, 1945. She was assigned to position as Stenographer-Clerk in the Superintendent's office at Aurora. Employees' Exhibits A and B.

Mrs. Heitz continued in the service of the Carrier in the Superintendent's Office at Aurora until January 15, 1949. She was then furloughed account force reduction. Employees' Exhibits C (1), C (2) and C (3).

Mrs. Heitz did not exercise her seniority rights by displacing a junior employee, but reverted to the status of a furloughed employee, retaining her rights as provided for in Rule 15 (b) of the Agreement. That she holds seniority rights as a furloughed employee has not been questioned in our handling of this case with the Management, hence copies of seniority rosters are not here introduced in support of our statement. Her seniority date, as heretofore stated, is March 31, 1945.

April 26, 1949, the Shop Accountant at Aurora issued Bulletin Notice No. 4 advertising vacancy in position of Addressograph Operator. This position is on a seniority roster other than where Mrs. Heitz retains her seniority. She, however, applied for the vacancy under the provisions of Rule 16. Her application was declined by the Shop Accountant Mr. Coffee, and his action was later sustained by higher officers. It might here be stated, as informa-

3. The decision of the Carrier to reject claimant's application because of her lack of fitness and ability was reasonable and motivated solely by the facts in the case.
4. The Third Division has uniformly upheld the rights of Management to make similar decisions in parallel situations, and places the burden of proof upon claimant to show her fitness and ability to fill the position.

With the evidence presented herein to the contrary, Mrs. Heitz cannot show that she possessed the fitness and ability required for this job. There was nothing arbitrary or capricious about the Carrier's rejection of her application. It made a reasonable decision based on the particular facts involved, and that decision should be upheld by this Board.

In view of the above, the claim presented herein should be denied in its entirety.

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The Carrier affirmatively states that all data herein and herewith submitted as been previously submitted to the Employees.

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(Exhibits not reproduced).

OPINION OF BOARD: Claimant, Annette B. Heitz, began her service with the Carrier on March 31, 1945. On May 22, 1945 she was assigned to the position of Stenographer-Clerk in the Superintendent's Office at Aurora, Illinois. The duties of this position were described as "Opens distributes and mails correspondence. Operates mimeograph machine and handles other work as required." This position, as the result of a force reduction, was abolished effective January 15, 1949. Claimant thereupon became a furloughed employee pursuant to Rule 15 (b) of the parties' then effective agreement.

On September 28, 1949 Claimant bid on the position of Addressograph Operator in the Office of the Shop Accountant at Aurora, Illinois pursuant to Notice No. 24 of that office issued on September 27, 1949. This Notice described the duties of the position as "Operate adressograph in printing of daily timeslips and time rolls; changing name plates; handling office mail and other duties that may be assigned." Claimant's bid was rejected and D. J. DeGeeter, a new employee, was assigned to the position. Claimant contends she should have been assigned to the position and the claim made in her behalf by the Brotherhood is based on that contention.

Claimant had no seniority in the Shop Accountant's Office, her seniority being in the Division Superintendent's Office. Consequently her bid for the position of Addressograph Operator was made as an employee pursuant to Rule 16 of the parties' then effective agreement. This rule provides:

"Employees filing application for positions on other seniority districts will, if they possess sufficient fitness and ability, be given preference on the basis of length of service on positions within the scope of these rules over non-employees or employees not covered by this agreement."

It is the general rule,, as established by the awards of this Division, that in the first instance the employer must be the judge of the fitness and ability of an employee if there is nothing in the rules of the parties' agreement abrogating it. We find no such rule. In fact, the following language of Rule 16, "if they possess sufficient fitness and ability", preserves it. Therefore, unless it is made to appear that the action of the Carrier was unreasonable, arbitrary or capricious its determination will be sustained. This burden rests upon the Claimant. See Awards 2031, 2350, 4918, 5238, 5417 and 5603 of this Division.

As stated in Award 5417: "Repeated decisions of this Division of the Board have established the rule that once fitness and ability of an employe have been found by the Carrier to be lacking, the burden rests upon the Claimant to overcome that decision by substantial and competent proof", citing awards 1147, 2031, 2491, 3273, 3469, 4040 and 5147 of this Division in support thereof.

The record shows that prior to November, 1942, certain duties were normally attached to the position of Addressograph Operator which required considerable physical strength to perform and that men had always been assigned to the position. Because of the war it became difficult, if not impossible, for Carrier to get all the manpower it needed. As a result, from November 1942 up until sometime in May of 1949 Carrier had other employes in this office perform the more arduous duties of this position and, during this period, assigned female employes thereto. Beginning with May of 1949 these more arduous duties were returned to the position. It was after these duties had been returned to the position that Claimant bid thereon.

It is understandable that such a temporary arrangement would be made so the position could be filled by the best employes available, although such employes might not be able to perform all of the duties normally assigned to and a part thereof. Such arrangement would not prevent the Carrier, when the emergency necessitating the change had passed, from restoring to the position all of the duties normally assigned thereto. See Award 4892 of this Division.

With the return of these duties to the position we think the record sustains Carrier's action for it is apparent Claimant did not have the physical fitness or ability to perform all of the duties of the position for which she bid.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1953.