

Award No. 12461
Docket No. CL-11551

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. Carrier violated rules of the Agreement governing working conditions of the employees by denying bid of senior applicant, Mr. John E. Heady, Jr., for position No. 262, Assistant Bureau Chief-Machines, Office of Special Auditor, 63rd Street, Chicago, Illinois, advertised by Bulletin No. 63 of July 1, 1957, and awarding same to one Mr. Edward L. Wysocki, and

2. Mr. Heady, Jr. be paid difference between his rate of pay and that of position No. 262 for period that position was held by Mr. Wysocki (approximately one month).

NOTE: Reparation to be determined by joint check of Carrier's payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: The Carrier's Office of Special Auditor, located at 63rd Street and Dorchester Avenue in Chicago, Illinois, performs all of the machine accounting work for the Accounting Department. This embraces typing and transcribing; calculating and comptometer; IBM key punch and IBM machine work.

We are concerned with the IBM machine portion of this office in the instant case. At the time of this claim there were four (4) Bureau Chiefs in charge of the Machine Bureau. Position No. 262 served under one of these Bureau Chiefs as Assistant Bureau Chief along with eight (8) Machine Operators and one (1) File Clerk. Their work consisted of handling key punched cards for two other accounting offices, namely Auditor of Disbursements and Freight Claim Agent, running them through IBM Machines for preparation of various reports.

The position of Assistant Bureau Chief involved in this dispute was assigned to Mr. H. H. Thorpe, with seniority from April 9, 1934. In July, 1957,

We also note that the Agreement does not authorize or compel the Carrier to instruct an employee in the operation of a position he wishes to assume. This Board cannot make rules. It can only interpret them." (Emphasis ours.)

Therefore, the meaning and intent of the provisions of Agreement Rule Nos. 6 and 9 between the parties here involved, as interpreted by your Board, are clear and do not support the Employees' position in this dispute.

It is clear that Claimant Heady had superior seniority to the employee awarded the subject position, however, it is also clear that it was properly determined that Claimant did not measure up to the fitness and ability requirements necessary to be assigned the position of Assistant Bureau Chief-Machines, as required by Rule 6.

In summation,

1. Claimant Heady was given full and unprejudiced consideration for promotion and was found lacking in sufficient fitness and ability to perform the supervisory duties of the position of Assistant Bureau Chief-Machines.
2. The Carrier exercised its discretion according to the principles laid down by this Board (backed up to disputes involving the same parties and the same rule here involved), in declining to award the position to the Claimant after a comprehensive consideration of his fitness and ability.
3. The Claimant was shown to have been lacking in sufficient fitness and ability for the position and no evidence has been brought forth to show the Carrier's findings incorrect, and, therefore, there can be no reason for this Board to set aside or reverse the decision made by the Carrier.
4. The Claimant clearly demonstrated his lack of personal character and ambition when he voluntarily dropped out of a special machine course, which he attended at Carrier's expense, the completion of which would have helped him toward promotion to more responsible positions.

The Carrier maintains it has shown that it has adhered strictly to the provisions of the promotion rule, Rule 6, by promoting the senior applicant possessing sufficient fitness and ability for the disputed position and that the Employee's claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns Carrier's right to determine the fitness and ability of its employees for assignment to bulletined supervisory positions.

The Office of Special Auditor performs machine accounting (IBM key punch and various IBM machine work) for the Accounting Department, and insofar as is here pertinent, one of the positions in that office is that of Assistant Bureau Chief-Machines. The duties and responsibilities of this position require that the occupant not only know the proper operation of IBM

aptitude test; and, this method of selecting an employe for promotion contravenes Rule 6. Carrier replies that the test was only one factor in its consideration of "fitness and ability". Among other factors which it says, without contradiction, that it considered were Claimant's unfavorable tardiness and absenteeism record and his dropping out of an IBM training course in which he had been enrolled at Carrier's expense. Certainly, such propensities are not in harmony with supervisory qualifications.

Aptitude tests are now widely used throughout industry. *Per se*, such tests cannot be held to be destructive of the contractual rights of employes. It is only if it is proven that the test was designed and used to circumvent the employe's contractual rights that it is *malum per se*. We have no such proof in this record. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.