

Award No. 13576
Docket No. CL-14186

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5356) that:

(1) The Carrier violated rules of the current Clerks' Agreement when it failed and refused to award and assign position of IBM Data Processing Machine Operator in the office of the Auditor of Machine Accounting at Savannah, Georgia, which was advertised in Bulletin No. 9 of March 23, 1962, to Mr. Frank J. Baran and, instead, gave said award and assignment to Mr. L. M. Fort, a junior employee.

(2) Mr. Frank J. Baran shall now be assigned to the position of IBM Data Processing Machine Operator referred to above.

(3) Mr. Frank J. Baran shall now be paid in the amount of \$495.66 per month, in addition to the compensation already paid him, for the period which extends from April 16, 1962 until the date he is assigned to the position of IBM Data Processing Machine Operator referred to above.

EMPLOYEES' STATEMENT OF FACTS: Mr. Frank J. Baran, Clerk, Office of Auditor of Disbursements, a division of the Accounting Department of the Carrier at Savannah, Georgia, has been employed in the Office above referred to since December 1, 1934 and has held a wide variety of positions; has never heretofore been disqualified on any position to which assigned; is fully familiar with the general work in the Accounting Department and had held a position as Programmer in the Office of Auditor of Machine Accounting at Savannah, Georgia until the abolishment of that position due to force reduction on December 29, 1959. He had made a satisfactory score on the IBM Programmers' Test (as required in Bulletin Qualifications), his score having been higher than that of others who took this same test; he had completed IBM Programmer courses in the 650 and the 1401 Systems; and, at the time of the abolishment of his position as Programmer, received a letter from the then Comptroller, Mr. L. H. Barry, to the effect that he (Baran) "had done an excellent job on this temporary appointment."

AWARD

Claim denied."

THIRD DIVISION AWARD 6379
(Referee Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation.

AWARD

Claim denied."

THIRD DIVISION AWARD 6378
(Referee Kelliher)

"Based upon an analysis of all of the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.

AWARD

Claim denied."

THIRD DIVISION AWARD 5418
(Referee Parker)

" * * * Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.

AWARD

Claim denied." (Emphasis ours.)

Also see other awards, including Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6225, 5941, 2676 and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others — all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Petitioners have produced no evidence of any violation.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny the claim in its entirety.

OPINION OF BOARD: Under date of March 23, 1962 Carrier's Auditor of Machine Accounting bulletined the vacant position of IBM Data Processing Machine Operator, to be filled effective April 16, 1962. This was the highest paid of the five Operator positions in the machine room, Office of Machine Accounting, at Savannah, Georgia. Claimant F. J. Baran submitted a bid for the subject vacancy but Carrier awarded it to L. M. Fort, a less senior applicant. The contention made in support of this claim is that Claimant possessed sufficient fitness and ability for the involved position and therefore, under Rule 7 of the Agreement, his greater seniority entitled him to be awarded the vacancy.

Rule 7, which is the governing provision in the instant case, reads:

**"RULE 7. PROMOTIONS, ASSIGNMENTS AND
QUALIFYING PERIOD**

(a) Employees covered by these rules shall be in line for promotion. Promotions, assignments, and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that seniority shall not apply in filling the positions listed in Rule 1, section (d), Exception 'A'.

(b) The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two (2) or more employees have adequate fitness and ability.

(c) Employees declining promotions or declining to bid for a bulletined position shall not lose their seniority.

(d) Employees awarded bulletined positions or exercising displacement rights will be allowed thirty (30) working days in which to qualify, and failing, shall retain all their seniority rights, may bid on all bulletined positions, but may not displace any regularly assigned employee. While qualifying under this rule employees shall, upon request, be given any advice and instructions necessary as to the work assigned to the position by the department head.

(e) When it is definitely determined, through hearing if desired, that the employee cannot qualify, he may be removed before expiration of thirty (30) working days."

The position here involved is not covered by the exception clause in Rule 7 (a). Thus it is apparent that the question is whether Claimant Baran possessed sufficient (or adequate) fitness and ability for the position.

The bulletin for the subject IBM Data Processing Machine Operator vacancy described the position in pertinent part as follows:

"QUALIFICATIONS: Knowledge of operation and various functions of IBM Data Processing Machine System. Thorough ability to read, understand, interpret and patch, alter or amend necessary programs for operation of Data Processing Tape Systems. Satisfactory score on IBM Programmers' Aptitude Test.

DUTIES: Operate Data Processing System and originate, code and check out any restart procedures that may be necessary to produce such reports, documents, statements or other data as may be required by Management."

The incumbent of this position was required to operate any or all of the several machines comprising the IBM 1401 system, which was placed in operation on or about August 1, 1961. Payrolls (including preparation of paychecks), deduction lists, time books, tax reports, I.C.C. distribution to various accounts, etc. are prepared by this computer system.

At the time Claimant Baran bid for this position he was occupying a position identified as Joint Facility Bill and Voucher Clerk. At the same time, the successful bidder for the disputed IBM Operator vacancy (Fort) was working as Road and Equipment Clerk, being located at a desk adjacent to the Claimant. The Organization notes that the duties of these two positions required similar knowledge, and that the monthly rate of Claimant Baran's position was only \$5.00 per month less than that of the position held by Fort. Prior to this time the Claimant had received a satisfactory score on the aptitude test for IBM Programmer, had satisfactorily completed a two week IBM Programmer training course, and for approximately five and one-half months ending in December, 1959 had occupied a position as Programmer in the Office of Auditor of Machine Accounting at Savannah. When Claimant was notified that his Programmer position was being abolished due to force reduction, he was advised by the Comptroller's letter that he (Baran) had "done an excellent job on this temporary assignment." The duties of Claimant's Programmer position consisted of setting up division tables, from which IBM cards were cut on key punch machines operated by Key Punch Operators.

As of March 26, 1962, when Claimant Baran bid for the Operator position here in dispute, he lacked any experience in operating IBM equipment. On the other hand, Fort had acquired 15 years of experience as an Operator of various IBM machines in the machine room in Carrier's Office of Machine Accounting. He also had obtained a satisfactory score on the IBM Programmer Aptitude Test. Since installation of the 1401 system was not completed until about August 1, 1961, it appears that neither the Claimant (as a Programmer) nor Fort (as an Operator) had obtained prior experience with this particular system, however.

The evidence presented indicates that Claimant Baran had compiled a commendable record of service by the time he bid for the bulletined vacancy in the position of IBM Data Processing Machine Operator, and that he had demonstrated aptitude and good performance as an IBM Programmer. The duties of the disputed position involved the operation of a recently installed IBM data processing system, however, and we have seen that Claimant had no previous experience in operating any IBM equipment. Carrier states, and it is not successfully refuted, that even if Claimant had been given a 30 day trial period on operating the 1401 system he would not have become qualified. Under these circumstances we cannot see how it reasonably can be held that Claimant possessed sufficient fitness and ability for the position within the meaning of Rule 7. While a rule of this type does not necessarily require that the senior applicant be immediately qualified to assume the duties of the position without guidance or assistance (Award 3273), it certainly does not obligate the Carrier to award the senior applicant a position for which he could not qualify within 30 days even if he were so assigned.

We conclude that the record amply supports the Carrier's determination that Claimant Baran did not possess sufficient (or adequate) fitness and ability for the involved position. The claim must be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the 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 1965.