

Award No. 13759
Docket No. CL-14372

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5413) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1, 2-A-2 (a) and (b), and 2-A-3 (a), (b), (c) and (d), when it disregarded the seniority of Clerk Mrs. Emaline Herbertz, who had submitted bids on nine of the twenty-three positions advertised in the Regional Comptroller's Office, Indianapolis, Indiana, Southwestern Region, in Group 1 Bulletin No. 16, dated March 29, 1961.

(b) The Claimant, Mrs. Emaline Herbertz, should be allowed eight hours' pay a day for each of the positions on which she submitted a bid, but which was awarded to a junior employee, or to which a junior employee was appointed, commencing April 20, 1961, and continuing until the violations are corrected. Item 2 (b), of special Agreement dated December 21, 1960, covering the Transfer of Positions from the Office of Auditor of Expenditures, to Cincinnati, Ohio, and Indianapolis, Indiana, has also been violated in the present case.

[Docket 1291]

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement

OPINION OF BOARD: Employees allege breach of the Agreement, and, more particularly, those rules set out in the Statement of Claim, when Carrier allegedly failed to observe Claimant's seniority in her bids for certain new clerical positions advertised in the Regional Comptroller's office in Indianapolis, Indiana, in 1961.

There is in evidence a Joint Statement of Agreed Upon Facts reading, in pertinent part, as follows:

"Effective June 1, 1961, certain work pertaining to the Southwestern Region which was previously performed in the office of the Auditor of Expenditures at Chicago, Illinois, was transferred to Indianapolis, Indiana, under the jurisdiction of the Regional Manager, Southwestern Region.

Clerical Bulletin No. 16, dated March 29, 1961, advertised twenty-three positions which were to be transferred from Chicago to the Regional Comptroller's Office, Indianapolis, Indiana, as provided in the Agreement dated December 21, 1960, effective May 1, 1961. Bids were to be accepted until 9:00 A. M., April 5, 1961.

Under date of April 4, 1961, the Claimant, Emaline Herbertz, submitted bid on Form CT-88 to the Superintendent-Personnel for the following positions advertised in Bulletin No. 16:

A-32
A-35
A-37
A-56
Accounts Receivable Clerk (No Symbol)
A-65
A-69
A-7
A-15

All persons bidding for or making application for the positions advertised in Bulletin No. 16 were interviewed and tested to determine each person's fitness and ability for the job for which they had made application and/or bid."

Claimant failed to pass the test, and, accordingly, was disqualified as a bidder.

The gist of the Employees' complaint here is that the test given Claimant to determine the sufficiency of her fitness and ability to perform the duties of the positions she bid for was not related to those duties. Therefore, it was, according to the Employees, an improper method employed by the Carrier to bar Claimant from exercising her preferential seniority rights to the work sought. Other collateral issues were raised by the Employees, none of which are controlling or dispositive of the claim. They will not, therefore, be dealt with here.

The record shows that the test given Claimant was the same as that given all other applicants for the advertised positions.

Moreover, the parties hereto had entered into a special agreement providing, in effect, that written or oral examination could properly be required of employees before assignment to positions to determine their qualifications, except when those qualifications were "definitely known by all concerned."

The positions sought by claimant were newly-established ones and performance of the described duties thereof apparently required the possession of certain accounting and clerical skills of a high order of competence. It is a fair inference, therefore, that Claimant's as well as the other applicants' ability to perform the work could not have been "definitely known by all concerned."

The general rule consistently enunciated by the Board in this type of case is that we will not interfere with a carrier's exercise of discretion and judgment in determining the fitness, ability and qualifications of an employee where there is no contract provision restricting such action, and where there is no credible evidence of arbitrary or discriminatory carrier conduct. (See Award 3273 and Awards cited therein.)

The contract in evidence contains no bar to the testing of employees seeking promotions or other more responsible jobs. In fact, it is expressly permitted under a special agreement. The test given Claimant was non-discriminatory—all applicants had to take it. There is no rule or practice shown in this record that only a particular kind of test must be given, i.e., one in which the sole criterion is an applicant's ability to perform certain duties only. So long as it is fairly administered, nondiscriminatory, and related to the requirements of the position sought, a test to assess an applicant's fitness and ability to perform the work thereof may properly be required. (See Award 4918.)

The Employees have failed to show that the rules relied upon have been violated, or that the test given Claimant prejudiced her rights under the Agreement.

Accordingly, the claim will 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1965.