

Award No. 14154

Docket No. MS-15233

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

AUGUST HALPIN

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Petitioner states that the Cincinnati Union Terminal Co. arbitrarily, capriciously and with bias refused petitioner's request of June 21, 1963, to displace Miss Eileen Jeter as Time Clerk. This refusal, in effect, denied petitioner his seniority rights and was in violation of the agreement between the Cincinnati Union Terminal Co. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees then in effect.

Petitioner claims that he is entitled to eight hours' pay at \$2.609 per hour, or \$20.872 per day, for each working day since the date of said refusal of July 15, 1963, to date.

OPINION OF BOARD: Petitioner, Augustine Halpin, attempted to displace an employee junior to him in seniority who held the position of Time Clerk in the Auditor's office of the Carrier. One of the requirements of the position was the ability of the holder of the same to operate a comptometer. Carrier refused the position to the Petitioner for the reason, in the judgment of the Carrier, that he could not properly operate a comptometer.

Rule 11 of the agreement provides: "Promotions, assignments and displacements shall be based on seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail. Management to be the judge, subject to appeal." (Emphasis ours.)

In a fitness and ability case such as we have here, this Board has held, in innumerable awards, as a basic principle the prerogative of management to determine the fitness and ability of its employees, and further, the Board will not set aside the Carrier's decision unless it can be shown that it was arbitrary and capricious. A review of the Record in the instant case convinces this Board that it has been substantially established that the Carrier was justified in refusing to assign to the Petitioner the position of Time Clerk for which he applied. See Awards No. 11572; 11780; 12994.

The last communication between the respective parties on the property was September 11, 1964. After this date and in the Petitioner's rebuttal submission an attempt was made to strengthen and bolster up Petitioner's position by offering new evidence not theretofore presented. Under the rules of this Board this effort comes too late for the Board to give it any consideration.

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.