

Award No. 14976
Docket No. CL-15740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5818) that:

(1) The Carrier violated the current rules and working Agreement, particularly Rules 4, 8, 10 and 13, and the provisions of Special Agreement dated May 1, 1964, when on May 20, 1964, it failed to allow Mr. John Tronsdal to exercise his seniority rights and displace junior employe, John E. Ward, from the position of Chief Clerk in the Assistant Superintendent's Office at Proctor, Minnesota.

(2) Mr. John Tronsdal is to be assigned to the position of Chief Clerk in the Assistant Superintendent's Office, Proctor, Minnesota, and be compensated, in accordance with the provisions of the Special Agreement of May 1, 1964, for all monetary loss sustained each day a junior employe occupies such position beginning May 20, 1964, and continuing until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Duluth, Missabe and Iron Range Railroad is predominantly a seasonal iron ore hauling Carrier which for many years operated two Operating Divisions, the Iron Range and the Missabe Divisions. At the terminal point of each Operating Division the Carrier maintained an Iron Ore Dock during the Iron Ore Shipping Season.

In 1963, the Carrier terminated the operation of its Iron Range Division Ore Dock, and consolidated its ore shipments over the Missabe Division Ore Dock. After lengthy negotiation this Organization and the Carrier, on May 1, 1964, reached agreement providing for Iron Range Division clerical employes of Iron Range Division, Seniority District No. 6 to follow their work, to take part in the consolidated seasonal iron ore movement on the Missabe Division, Seniority District No. 2 at Duluth, Minnesota.

The Agreement of May 1, 1964 (Employee's Exhibit A), provided for the transfer of seasonal clerical positions incidental to the ore movement from Seniority District No. 2, Missabe Division Transportation Department, and

The correspondence involved in the handling of the instant claim on the property is attached and marked as Carrier's Exhibit C.

(Exhibits not reproduced.)

OPINION OF BOARD: The Iron Range Division and the Missabe Division were two separate seniority divisions operated by Carrier herein. Carrier closed its Two Harbors ore dock on the Iron Range Division and on May 1, 1964 negotiated an agreement setting up a combined seniority roster of Iron Range and Missabe Division employees, thereby allowing Iron Range employees to follow their work to the remaining Missabe Division. In accordance with the May 1, 1964 agreement, nine Iron Range employees bid on certain bulletined positions and were awarded those positions. As a result, Claimant was displaced from the position he held prior to May 1, 1964. On May 17, 1964, Claimant requested that he be allowed to displace the incumbent of the Chief Clerk's position, a junior employee. Carrier refused the request, contending that Claimant was not qualified and did not possess the fitness and ability to fill the position applied for.

This Board has held that if the Carrier determines that the applicant lacks sufficient fitness and ability, the burden is on said applicant to establish that he possessed reasonable sufficient fitness and ability to occupy the position (Award 14736 — Dugan). In the instant case, Claimant failed to meet this burden.

This Board has also repeatedly held that it is the prerogative of management to determine the fitness and ability of its employees and that we will not substitute our judgment for that of the Carrier unless it can be shown that Carrier's decision was arbitrary or capricious. (Awards 9966 — Weston), 10927 — Dolnick, 11572 — Hall). The record in this case is completely void of any evidence that the Carrier acted in bad faith or was arbitrary or capricious in rejecting Claimant's application.

The Organization cites Rule 10 of the agreement, thereby intimating that Carrier was obligated to place Claimant in the position applied for and give him 30 days within which to qualify. This theory has been rejected many times by this Board. See Awards 2142 — Thaxter, 14765 — Devine, 14736 — Dugan. It was never intended by the parties to this Agreement that Rule 10 even be considered in determining whether an application for a position should be accepted or rejected. The only function of Rule 10 is to make possible the correction of an erroneous acceptance of a position application. Rule 8 of the Agreement herein contains the criterion for promotion.

This case is distinguished from sustaining awards for the reason that here, the Carrier did not act in an unreasonable, arbitrary or capricious manner.

For the foregoing reasons, we will deny this 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 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 November 1966.

**LABOR MEMBER'S DISSENT TO AWARD 14976
DOCKET CL-15740**

Award 14976, Docket CL-15740, simply does not reflect a proper interpretation of the Rules involved.

The above statement is especially true, for example, with regard to the conclusion that:

"The only function of Rule 10 is to make possible the correction of an erroneous acceptance of a position application." (Emphasis ours.)

Rule 10 reads:

"RULE 10.

TIME IN WHICH TO QUALIFY

(a) An employe entitled to a bulletined position or exercising displacement rights will be allowed thirty (30) working days in which to qualify, and failing, shall retain all his seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employe. When it is definitely determined that the employe cannot qualify, he may be removed before the expiration of thirty (30) working days.

(b) An employe disqualified for a position to which his seniority entitles him will, if he requests it in writing, be notified in writing as to cause for such disqualification, and if he considers himself unfairly disqualified, he may request and shall thereupon be given an investigation as to such disqualifications under the provisions of Rule 19.

(c) Employes will be furnished all necessary instructions and assistance to permit them to qualify for the position."
(Emphasis ours.)

It is quite clear, from even a cursory reading, that Rule 10 encompasses much more than what the Referee's conclusion would indicate.

I feel that this case should have been sustained on the facts presented if the Rules had been properly considered and applied. I therefore dissent.

**D. E. Watkins
Labor Member
12-21-66**

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