



Award No. 17040
Docket No. MS-17399

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

MR. WILLIAM McCARTHY

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Please accept this notice of my intention to file Ex Parte submission within 30 days of date of this notice, on the following questions.

My disqualification from position symbol AFR-41 clerk in the rate and revision dept. of the L.I. RR, and I emphasize the following date, Oct. 19, 1965.

My reason for making an issue of this incident at this late date is that I feel it had an influence on a recent disqualification I was involved in, the details of which I will explain further on in this notice.

On the above mentioned job I was given approximately 18 days of training in this very technical type of work and was then disqualified.

Sometime in the future, another clerk started work in this department and was given the benefit of six or seven months of full time training, and in my opinion this is discrimination.

I can also produce a petition signed in my behalf by employees of this department.

The more recent disqualification I referred to above was from position symbol AD-138 temporary, in the Auditor of Disbursements Department, May 17, 1967, after approximately 18 days of training and actual working of the job.

The thing that has spurred me on to contest this disqualification is the events that led up to it, whereby unfinished work was taken from my desk at the request of supervision for the purpose of finding errors to disqualify me on.

I hasten to add that this was done after I had finished my day's work and had gone home. I also take exception to the fact that supervision ordered me to turn over every bit of work I performed after this incident and my reason for taking exception is because I knew the reason for it, and it had me completely frustrated.

As I stated at the beginning of this notice, that I felt my disqualification from the rate and revision department had an influence on my disqualification from the auditor of disbursements department, and my reason for thinking this is that in my interview for a job in this department by the Office Manager, Mr. F. O'Connor, my disqualification from the rate department was somehow brought up, and when I tried to explain my side of the story, Mr. O'Connor cut me short, and said that's not the way he heard it.

The last statement I would like to make is that I have worked 25 jobs with this company, and I might add to the satisfaction of all concerned, and as a matter of fact on one of these jobs I was given a personal raise of approximately \$23.00 per month, which, I believe you'll find unusual for any reason in companies that have Union representation.

It seems to me that after 25 jobs and fifteen years with a company, surely a clerk's ability should be established.

I spent three good years of my life in the Armed Forces, and while I realize this doesn't give me the right to unreasonable rights, I hope these years weren't spent to preserve anyone's right to treat people the way I was treated on these two positions.

In closing, I would like to state without reflection on you or members of your agency, since I know you don't set up the rules or locations of your Agency, I think it is difficult for most people to air their problems by mail, and this is the big reason for my delay in presenting them to you.

I'm sure that if one of your offices were within reasonable distance of me, as for instance the National Labor Relations Board is, then I'm sure I would have gone to you with these problems as soon as they happened. Thank you for your attention.

OPINION OF BOARD: Whether Claimant is protesting Carrier's action disqualifying him from position symbol AFR-41 in October, 1965, or its action disqualifying him from position symbol AD-138 in May, 1967, is unclear. Nevertheless, the awards are legion that it is the Carrier's prerogative to determine the fitness and ability of an employee for a particular position. See Awards 16871, 15780, 15494, 14976 and 13876. Unless it be shown that Carrier's determination is arbitrary and capricious, its action will not be disturbed. The burden is on the Claimant to make such a showing. See Awards 16546, 16360, 16309 and 15494, among others.

We have carefully reviewed the record in this case, and there is an absence of proof by the Claimant that Carrier's action was arbitrary and capricious. Accordingly, we cannot find that the Agreement was violated, and 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 March 1969.