



Award No. 17220

Docket No. CL-17861

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

FRUIT GROWERS EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6511) that:

(a) The Company violated Rule 8 and other rules of the current Clerks' Agreement when on February 8, 1968 it failed to award the position of Senior Clerk to Mrs. Donna Ellis, but instead awarded this position to a junior employee, and

(b) The Company shall now compensate Mrs. Donna Ellis the difference between the rate of pay she has received and the rate of the Senior Clerk position for each date commencing with February 8, 1968 and continuing until such time as she is properly awarded this position.

EMPLOYEES' STATEMENT OF FACTS: On February 2, 1968 the Company posted Notice No. 1242 in its Accounting Department—District 4, advertising the position of Senior Clerk rated at \$532.93 per month. (Employees' Exhibit "A").

Applications for this position were submitted by Claimant Mrs. Donna Ellis with a seniority date of June 6, 1966 and by one William D. Phillips, Jr. who had only been in service with the Company approximately five (5) months prior to advertisement of this position.

Under date of February 8, 1968 the Company issued Notice No. 1242 awarding the position of Senior Clerk to William D. Phillips, Jr. the junior of the two employees.

Under date of February 15, 1968 claim was properly filed on behalf of Claimant Ellis with Deputy Auditor Mr. J. Douglas Sartor requesting that she be awarded the position and that she be compensated at the rate of the Senior Clerk position for each day, effective February 8, 1968, until she is transferred and assigned this position. The claim was denied by Deputy Auditor Sartor under date of March 6, 1968. (Employees' Exhibit "B").

Subsequent appeal was made to the highest officer of the Company designated to receive such appeals and the appeal was denied by letter dated June 4, 1968.

der these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient seniority shall prevail."

(The qualifying provision appearing in many agreements—

"Note: The word sufficient is intended to more clearly establish the right of the senior employee to bid . . ."—is not a part of the agreement between this Company and the Brotherhood of Railway, Airline and Steamship Clerks.)

Brotherhood's Claim. The Brotherhood claims that the Company violated the aforementioned Rule 8 when it failed to award the position to the senior applicant, Mrs. Donna Ellis, but instead awarded this position to a junior employee. In its appeal from the Company's denial of the original protest the Brotherhood representative stated that Mrs. Ellis was denied her seniority rights based on the fact that she is a woman.

As the Company understands the claim, it is alleged that Mrs. Ellis has both fitness and ability for the position in question and therefore her seniority should prevail.

OPINION OF BOARD: The issue involved herein is whether or not Carrier violated the Agreement when it failed to award the Senior Clerk's position to Claimant rather than to another employee with less seniority than Claimant.

Rule 8 of the Agreement is controlling herein in deciding this dispute. Said Rule 8 provides:

"BASIS OF PROMOTION, ASSIGNMENTS AND DISPLACEMENTS.

Employees covered by these rules shall be in line for promotion. Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

The Organization's position is that (1) Claimant did possess the necessary seniority, fitness and ability to be awarded the position of Senior Clerk; (2) Carrier does not question Claimant's fitness and ability to perform the work of the position, but rests its judgment on "experience"; (3) that the incidental duty of moving files is not of sufficient frequency or importance to bar a female employee from satisfactorily performing the assigned duties of the Senior Clerk position.

Carrier's defense to this claim is that Claimant failed to meet the bulletined requirements of said position in that she did not have experience in Piggyback Operations; that one of the duties of the position is to transfer and move heavy transfer cases and boxes to and from storage and that Carrier will not assign women to positions requiring strenuous physical exertion in unsuitable locations.

When Carrier bulletined the position in question, it set forth certain qualifications necessary for the successful bidder to occupy said position of Senior Clerk. Among the qualification requirements were: "5. Must be

familiar with Accounting Classifications as it pertains to Piggyback Operations." Also, Carrier set forth the "Duties" of said position as follows: "Effectively perform and assist in assignments relating to daily operations of the Piggyback Section, commensurate with said salary, including transfer of files to storage."

This Board has held that if the Carrier determines that an applicant for a position lacks sufficient fitness and ability, the burden is on said applicant to prove that he or she possesses reasonable sufficient fitness and ability to occupy the position. See Awards 3273, 1147 and 14736.

Claimant did not offer any proof that she was sufficiently fit and able to undertake the duties of the position. It is undisputed that she did not have the necessary experience in Accounting Classifications as applied to Piggyback Operations. Further, she did not offer any proof that she was physically able to move and transfer files to storage.

Therefore, we find that Carrier's determination that Claimant did not possess sufficient fitness and ability to occupy the position in question was not so unreasonable and arbitrary so as to amount to an abuse of its discretion in determining Claimant's fitness and ability to handle the position. Thus, we are compelled to deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.