



Award No. 18462

Docket No. CL-18697

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6754) that:

1. The Carrier violated the Clerk's Agreement when it awarded the position of Console Operator to Mr. Kimpel as the successful bidder of same.

2. The Carrier shall now compensate Mr. E. Sallay for any and all resulting wage losses sustained, or the difference what he would have been paid for so working the position of Console Operator and what he was paid for working as he did for the period beginning January 21, 1969 and for as long as the Violation continues, or until such time as corrective measures are applied, plus the overtime rate for each Saturday and Sunday required to work, which normally under the Agreement would have been his assigned rest days, as well as interest payment at the current rate, on the amount of reparation due, with the understanding, that the reparation due will be based on the rate of \$35.34 per day, or the rate of pay which may eventually be agreed upon, rather than the bulletined rate of \$29.50 per day, which was unilaterally and arbitrarily imposed for this position.

3. That the Employee's claim as set forth in Section 1 and 2 hereof was presented to the Carrier's Director of Personnel, Mr. C. M. Crawford, on March 26, 1969 and was never specifically declined or disallowed and as a consequence thereof, the Carrier did not meet its obligations as set forth in Section (a) of Article V of the August 21, 1954 Agreement and therefore, the claim must be allowed as presented.

EMPLOYEES' STATEMENT OF FACTS: The Carrier at its Clearing, Illinois facility maintains an IBM Machine Room, that was established by Agreement in 1955. The function of the Machine Room was to perform on machines work which was performed manually or semi-manually.

work, it is also necessary to choose those for training who will be most likely to succeed on the job at a later date. The validation studies made by IBM indicate that the test scores are positively related to job performance in this field.

Beginning in January of 1968, the carrier invited all of its employees to take this aptitude test. The carrier administered the test to one hundred and forty-six (146) employees. All tests were mailed to the IBM Corporation, 100 South Wacker Drive, Chicago, for grading. After the test results were returned, carrier selected two employees each with a score of A for training as computer programmers. Mr. S. Poley was taken from the clerical ranks with a seniority date of 3/20/67, and Mr. J. Braskich came out of the engineering department with a seniority date of 9/7/67. Claimant, Mr. E. Sally failed the examination with a score of D - 25.

In December of 1968 the carrier established the position of console operator. Employees were again notified at this time that, among other things, the carrier required a satisfactory score on the IBM aptitude test. Without any protest, the claimant and several other employees were re-tested. Claimant again failed to make an acceptable score. The second test score was D - 28.

Petitioner does not question or challenge the validation, administration or scoring of the IBM test, nor the score which the claimant failed to attain to warrant carrier to assign him to the position of console operator.

The carrier has completely complied with the rules of the current agreement when it established the new position of console operator. Clearly, it is Rule 8 of the Agreement which covers the situation before us, and when carrier bulletined the position under Rule 9, and established the rate of pay under Rule 59, it fully complied with the Clerks' Agreement.

Rule 59 reads, as follows:

NEW POSITIONS

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class where created."

The rate currently paid to the console operator was properly established in accordance with the current agreement. Since there was no similar position on this property, a survey was made on a number of Chicago-based railroads. The rate of \$29.50 is in conformity with similar positions within the industry.

There is no rule to be found in the Clerks' Agreement which prohibits or restricts the carrier from determining an applicant's "fitness or ability" by means, as here, with a validated aptitude test.

OPINION OF BOARD: This claim involves the fitness and ability of Claimant, Mr. E. Sallay, for the position of Console Operator. Although the record contains several contentions proffered by Petitioner, the sole question to be decided is whether Carrier violated the applicable Agreement when it awarded the position of Console Operator to Mr. Kimpel as the successful bidder of the same although he has less seniority than Claimant.

In order to ascertain fitness and ability, Carrier administered an aptitude test prescribed by the IBM for the position in question. Petitioner contends that since the Agreement does not specifically provide for the administering of aptitude tests, Carrier is precluded from employing them. And in any event, the test was inappropriate and unfair.

Rule 8 of the applicable Agreement provides that "promotion, assignment and displacement shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail." It is well established that the Agreement permits the Carrier to consider fitness and ability before seniority becomes effective. This is clearly a managerial prerogative not to be disturbed by the Board unless it is shown that the Carrier acted arbitrarily, capriciously and unreasonably. See Awards 16871, 15780, 15494. The burden is on Petitioner to make such a showing. See Awards 16871, 16546, 16360. We find no showing that the Carrier's actions were arbitrary capricious, and unreasonable. Claimant was allowed on two separate occasions to take the aptitude test in question and on both occasions failed to achieve a satisfactory mark. The record is void of any evidence indication that the test was not administered fairly.

Nor can it be denied that, in the absence of a contractual prohibition, it is within Carrier's managerial discretion to use tests to determine fitness and ability. The cases are legion in this regard, see Awards 17192, 14047, 15493. Since the Agreement is silent on this point, Carrier has the inherent managerial right to use an aptitude test to determine fitness and ability, provided it does not act arbitrarily or capriciously in doing so. Petitioner has not shown by a preponderance of the evidence that the test in question was unreasonable per se, or has been unfairly administered or that Carrier acted arbitrarily in its determination concerning Claimant's fitness and ability.

Nor was Claimant entitled to a 30-day trial period as Petitioner contends, since it was previously determined that Claimant was not qualified for the position in question. Therefore, 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

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