

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19678
Docket Number CL-19848

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Central Railroad Company of New Jersey
((R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7140) that:

(a) Carrier violated Rule No. 9 - REDUCING FORCES and related rules of the Clerks' Agreement, in the Office of Car Accounting, Zone 1, located in Newark, New Jersey, on June 2, 1971, when they failed to assign W. R. Cody, senior furloughed employee, with a seniority date of December 1, 1962, Group 2 and April 3, 1965, Group 1, to position CA-14, rate \$32.01 per day, and

(b) Carrier violated Rule No. 9 - REDUCING FORCES and related rules of the Clerks' Agreement, in the office of General Auditor, Zone 1, located in Newark, New Jersey, on May 26, 1971, when they failed to assign W. R. Cody, senior furloughed employee, with a seniority date of December 1, 1962, Group 2 and April 3, 1965, Group 1, to position GA-6, rate \$32.09 per day, and

(c) W. R. Cody should be compensated at the rate of \$32.09 per day and/or \$32.01 per day dating back to May 26, 1971, and continuing until such time as this violation of Rule No. 9 and related rules of the Clerks' Agreement is corrected, and

(d) W. R. Cody should be assigned to position GA-6, rate \$32.09 per day and/or CA-14, rate \$32.01 per day in accordance with Rule No. 9 and related rules of the Clerks' Agreement, while a junior employee is the incumbent of the above identified positions.

OPINION OF BOARD: Claimant, with Group 1 seniority date of April 3, 1965, and Group 2 seniority date of December 1, 1962, was furloughed on May 7, 1971. He filed Form "G" indicating his desire to be called for vacancies of more than 30 days, indicating his qualifications as a "General Clerk" and "Operator-Tow". Also indicated therein were restrictions "Disqualified from GA-76 effective May 7, 1971."

On May 19, 1971, by Bulletin No. 13, Carrier advertised permanent vacancy on Position GA-6 (among others) which was awarded to successful applicant, E. E. Smith, Group 1 seniority date September 14, 1966, effective May 26, 1971.

On May 26, 1971, by Bulletin No. 14, Carrier advertised permanent vacancy on Position CA-14. It was awarded to E. E. Smith, Group 1 seniority date September 14, 1966, effective June 2, 1971.

Neither positions GA-6 or CA-14 were offered to Claimant, Carrier having held that Claimant, although he had greater seniority than the successful applicants, did not have sufficient fitness and ability to perform the duties of either position. (See Rule 3(a) of the Rules Agreement). This shifted the burden of proof to the Organization. It failed to satisfy the burden. See, for example, our Awards No. 12461, 16480 and 17177.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.