

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19697  
Docket Number CL-19839

Benjamin Rubenstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Boston and Maine Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7108) that:

(1) The Carrier violated and continues to violate the Agreement between the Parties, effective September 1, 1952 and as amended, when, in the Office of Auditor of Revenue, Boston, Mass., it removed, Paula A. Whitten, from a position of Machine Operator and terminated her service.

(2) The Carrier shall now be required to restore Paula A. Whitten to a position of Machine Operator and compensate her for all salary and money losses sustained, with interest, retroactive to and including August 2, 1971 until restored to Carrier service.

OPINION OF BOARD: Claimant was hired as machine operator on May 16, 1969. She worked until January 8, 1971 when she went on Maternity leave.

She returned from her leave on May 12, 1971. On May 19 she was placed on billing. Her production on billing was not up to par. She and two other employees were warned about their failure to produce. The other two employees showed improvement, but claimant failed to do so and, on July 30, 1971, she was discharged.

The Organization claims that the placement of Claimant in billing was a promotion or change of occupation and should not have been done unilaterally without the consent of the claimant. By doing so, the Organization argues, the Carrier violated the provisions of the agreement.

The Carrier contends that the classification of Machine Operator, for which claimant was originally hired, covers typing, sorting, billing and a variety of similar operations. That this has been its established policy for more than 27 years and the Organization never opposed it or questioned it. When the Claimant was assigned the work on billing, she was not promoted or transferred to another job, but was merely given another chore in her classification.

The issue revolves around the question of whether the job assigned to Claimant on May 19, 1971 was a promotion, in which event she could either take, or refuse it, and return to her previous position; or whether it was merely an assignment within the same classification and seniority roster.

Carrier's Exhibit "A", attached to its statement of position, is a seniority Roster of Machine Operators. The claimant's name appears as No. 32 thereon. It shows her seniority date and date of dismissal. It does not indicate any transfer to another classification. The contents of this Exhibit was not controverted by the Organization. Nor did the Organization offer any evidence to show that the job performed by claimant prior to May 19, 1971 and the one which she was assigned to on that date are different classifications.

It is a well established axiom, that an employer is entitled to retain employees who are capable to do the job they were hired for and are assigned to. If an employee can not fill the position he, or she, was hired for, and does not improve in it within a period of time, the employer may discharge him or her.

The claimant, while able to do part of the job classification, could not or would not adjust herself to other parts of the job.

The Board can not set the standards for a job classification, nor the standards of production. This is the prerogative of management or subject to agreement between the parties. Absent such agreement, the standards set by management can not be changed or upset by this Board. This policy has been followed by the Board in its numerous decisions and is adhered to herein.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier has not violated the Agreement.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1973.