

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20694  
Docket Number CL-20730

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
(The Detroit and Toledo Shore Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
(GL-7556) that:

1. The Carrier violated the effective Clerks' Agreement when it failed and refused to recognize the Seniority of Clerk Lucille Smalarz when she was the senior applicant for Relief Clerk No. 1, Trenton, Michigan, and was denied said position.

2. The Carrier shall now be required to compensate Clerk Lucille Smalarz for eight (8) hours' pay at the pro rata rate of Relief Clerk No. 1, Trenton, Michigan for December 14, 1972 and for each and every day thereafter, 5 days per week, Tuesday through Saturday, that she is denied the right to fill this position.

OPINION OF BOARD: Claimant herein was disqualified by Carrier in her otherwise proper bid for a position which involved, as one of its duties, driving a company vehicle. Claimant, with some twenty nine years of seniority, bid on a position and was disqualified solely because of an alleged physical disability.

Petitioner insists that Claimant had a valid driver's license, had suffered no problems in the preceding year and Carrier was obliged to assign her to the position to which she was entitled by seniority. It is undisputed that one of the requirements of the position in question involved driving a company vehicle over both state and interstate highways.

Carrier asserts that it is not obligated to assign an employee to a position, by virtue of seniority, to duties which the employee is not physically capable and fit to perform. The Carrier's position has merit. None of the rules cited by Petitioner or its arguments can overcome the proof of record that the Claimant does not have the fitness required to fill the position to which she aspires. The record reveals admissions on several occasions by both Claimant and her husband that she was subject to fainting and "black outs", and that on one occasion she did faint while on duty in Carrier's Detroit office. The report of Claimant's personal physician that she was normal and physically able to work does not overcome the admitted long history of repetitive fainting spells since

her teenage years. Carrier's Medical Department found that her general physical condition was satisfactory but that "In view of her long history of repetitive fainting spells, Mrs. Smalarz was not thought fit to drive a Company vehicle and was, thus, disqualified for that activity."

Carrier has substantial responsibility for the safety of its own employees as well as the public. This Board cannot overturn Carrier's decision that there would be an ever-present danger to Claimant and others if she were permitted to occupy a position which required driving a vehicle in the performance of her duties. The Claim must 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

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.