

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20881
Docket Number CL-20878

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE:(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7661) that:

1. The Carrier violated, and continues to violate, the rules of the Clerks' Agreement when it denied Ernest R. Hein the position of Revisor No. 218 in the Freight Claim Department, Chicago, Illinois.
2. The Carrier shall now be required to place Mr. Hein on position of Revisor No. 218 and reimburse him for loss of compensation at \$2.37 per day, commencing July 2, 1973, and continuing until placed on position of Revisor No. 218.

OPINION OF BOARD: Claimant was employed by Carrier on August 3, 1936. Thereafter, he received a number of promotions; the last of which being to Interline Rechecker on August 11, 1970.

On May 21, 1973, Claimant was advised that his position would be abolished effective June 29, 1973, and that he was free to exercise his seniority. On May 29, 1973, Claimant advised Carrier that he desired to exercise his seniority rights to position as "Revisor #218." On the next day, he was notified that: "Under provisions of Rule 7 your application for displacement is rejected." On the same date, Claimant requested a hearing under Rule 58 (unjust treatment) - which was conducted on July 23, 1973. On August 10, 1973, after review of the transcript of investigation, Carrier advised Claimant that he did not have the fitness and ability necessary to enable him to be assigned to the position of Revisor #218; which advice prompted this claim.

From our review of the entire record, we conclude that the same basic contentions set forth herein were presented to us in Award No. 20878, and that the same considerations which prompted our Award in that dispute control the outcome of this case. Accordingly, for the reasons set forth in our Award No. 20878, we will deny this claim.

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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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.

LABOR MEMBER'S DISSENT TO
AWARD 20878 (Docket CL-20874)
AWARD 20879 (Docket CL-20875)
AWARD 20880 (Docket CL-20877)
AWARD 20881 (Docket CL-20878)
REFEREE SICKLES

In reviewing what is set out in Award 20878 together with the other awards dealing with the same subject matter, that is, Awards 20879, 20880, and 20881, one is at a loss as to how the majority of the Board can conclude, based on all the facts and circumstances which were presented, that carrier's action was such whereby it could not be set aside and the claims should not be sustained.

While one must recognize, that if all four claimants were permitted to displace experienced revisors at the same time, it could have led to some rather disquieting results, it is nevertheless evident that based on all the facts and circumstances which permitted the claimants to exercise the rights to which they were entitled under the agreement, together with the fact that all the claimants had numerable years of service and demonstrated their ability to properly perform in their prior assignments, based on the provisions of the agreement governing carrier's action was biased, arbitrary, capricious, and grossly abusive. This is especially due to the fact that the positions in question were not "exempted" as the carrier officials desired they be treated and it is evident that in this particular instance all the claimants did not have the potential to be able to perform the duties of the positions within a reasonable time and by no stretch of the imagination was carrier's action such that it could not be set aside.

Award 20878, along with 20879, 20880, and 20881 are palpably in error and all require dissent.


Gerald Toppen
Labor Member

12-23-75