

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21379
Docket Number CL-21248

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks ,
(Freight Handlers, Express and Station Employees
(Robert W. Blanchette, Richard C. Bond and
(John H. McArthur, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7849, that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rules 1-B-1, 2-A-1 and other rules, when they failed and refused to award position F-113, rate of pay \$823.55 per month, located at the Freight Department, 21st and Smallman Street, Pittsburgh, Pennsylvania, advertised on Bulletin No. 65 dated August 15, 1972 to the senior applicant seniority date of April 14, 1950 and instead awarded position to junior employee H. S. Zic seniority date of April 12, 1965.

(b) C. G. Dover be allowed eight (8) hours at the rate of \$823.55 per month for each and every day position F-113 works and he is not awarded same, starting August 23, 1972 account of the violation.

(c) C. G. Dover be allowed position F-113 Freight Station Department, 21st Street and Smallman Street, Pittsburgh, Pennsylvania.

OPINION OF BOARD: Claimant was the senior applicant for position F-113 Station Department, Pittsburgh, PA. which was advertised by Bulletin 65, dated August 15, 1972. A junior employee was awarded the position effective August 23, 1972, triggering this dispute.

Rule 1-B-1, cited by the Organization provides:

"RULE 1-B-1 - QUALIFICATIONS FOR BULLETINED POSITIONS
OR VACANCIES

(a) Employees covered by these rules shall be in line for promotion. Promotion, assignment, and displacement shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employee to the position or vacancy where two or more employees have adequate fitness and ability.

(b) Where the words 'qualified employee' are used in this Agreement, they shall mean that an employee has 'sufficient fitness and ability' as those terms are defined in paragraph (a) above.

(c) The provisions of this rule (1-B-1) shall have no application in filling official positions, supervisory positions or positions excepted from the Promotion, Assignment and Displacement rules listed in the Exceptions to Scope."

Petitioner's position is based principally on two points: that Claimant had performed in the position in question in 1971 and on certain other positions which qualified him for the bid opening; and second, that the position was essentially unchanged from that which had been moved to Pittsburgh in 1971. Petitioner argues further that Claimant had been offered a test by Carrier but did not take it because he felt it was unreasonable to be required to travel thirty miles at his own expense to demonstrate his ability.

The primary duties of Position F-113 which had been performed by Claimant for a four month period in 1971 were as follows (from Bulletin No. 7, January 26, 1971):

"PRIMARY DUTIES:

Waybilling; handling diversions, reconsignment, stop-offs; preparing AD 1634, AD 1635; posting of reporting dates, maintain interchange records; operate Data Origination Equipment, all phases and procedures incident to Car Movement Reporting System, and messenger service."

The record indicates that the Data Origination Equipment consisted of Teletype/Flexowriter equipment.

The same position, as indicated by Bulletin No. 65, dated August 15, 1972, contained the following description of primary duties:

"PRIMARY DUTIES:

Key Punching AD 1634/1635 information, posting reporting dates and generating reporting information. Operating IBM 026 Key Punch, 082-083 Sorter and 402-407 Accounting Machine."

The record indicates that Claimant filled three other positions subsequent to the moving of Position F-113 in 1971 and prior to the bid involved in the instant dispute. In none of those positions was he required to operate the equipment described by Bulletin No. 65, supra.

The Carrier states that it had some doubts as to Claimant's ability to handle the machine equipment required as an important element in the new Position F-113 and hence it offered to give him a test, which he refused to take. The position, according to Carrier, was awarded to a junior employee who successfully completed the test in question.

It must be noted, initially, that the position in question had changed significantly since Claimant had been an incumbent; the addition of the machine operations was a new and major element in the job, contrary to Petitioner's observation. Under Rule 1-B-1 supra, seniority prevails if fitness and ability of the applicants are sufficient. We have held consistently over the years that the determination of fitness and ability is exclusively a managerial function and will be sustained unless it appears that the decision of Carrier was capricious or arbitrary. Further, Petitioner has the burden of proof to establish Carrier's error (see Awards 16480, 20361, 21243 and a host of others). In this case Petitioner had

burden of showing that Carrier's decision was arbitrary or capricious. find no evidence in the record of this dispute to indicate that Claimant had the ability to operate the required equipment; there was no indicated prior experience or training on such equipment, even though Claimant was obviously an experienced employee in other aspects of the job.

Under the circumstances of the change in the position, Carrier clearly had the right to require some demonstration of ability to handle the machines involved, including the taking of a test. Such job related examinations have been held to constitute an appropriate tool for determination of current skill or ability. Claimant's position that he would not take the test unless he was paid for the time and travel is not reasonable or persuasive: the proper course of conduct would have been to take the test and then, if desired, file a claim for the time and travel.

Based on the entire record, we find that Carrier's determination of fitness and ability in this dispute was not arbitrary or capricious; 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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.

