

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21412  
Docket Number CL-21104

James C. McBrearty, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7751, that:

1. Carrier violated, and continues to violate, the Clerks' Rules Agreement at Chicago, Illinois in Seniority District No. 71 when it unjustly treated employe W. E. Parker by failing to award him Station & Misc. Timekeeper Position 08900 and in lieu thereof awarded the position to a junior employe.

2. Carrier shall now be required to assign employe W. E. Parker to Station & Misc. Timekeeper Position 08900.

3. Carrier shall now be required to compensate employe W. E. Parker the difference in rate of pay of Position 08900 and that of the position assigned to for each workday retroactive to December 21, 1973, and for all subsequent days until the violation is corrected.

4. Carrier shall now be required to pay seven percent (7%) interest compounded annually on such difference in rate until such time as claimant is made whole.

OPINION OF BOARD: Claimant was not awarded the position of Station and Miscellaneous Timekeeper, Position No. 08900, because in Carrier's opinion Claimant "lacked sufficient fitness and ability to perform Station and Miscellaneous Timekeeper responsibilities." Claimant's experience had been limited to being a Sorter and a Balance Clerk, while the employe who did get the position, although junior to Claimant in seniority, had experience as a Waybill Filer and a Comptometer Operator.

Carrier and Petitioner both cite and rely upon Rule 7, which provides that, "fitness and ability being sufficient, seniority shall prevail." ✓

The Board finds that under Rule 7, an employe is not entitled to a position unless such employe has sufficient fitness and ability to fill the position. In this regard, the Board has consistently held that Carrier may use tests or examinations or the observations and recommendations of supervisors as being determinative of fitness and ability (Awards 21131, 18875, 18774, 18462, 17192, 15626, 14040, 7037, 5025, 5006, 4918 and 3273).

Petitioner has not shown in the instant case that Claimant possessed sufficient fitness and ability to handle the position of Station and Miscellaneous Timekeeper. All that Petitioner established through the testimony of J. J. Lynch, General Bureau Head, was that Claimant "has done well with the activities assigned to his position /Balance Clerk/ and has been assigned duties other than his position, and has also done very well." To repeat, such testimony does not establish sufficient fitness and ability of Claimant to be a Station and Miscellaneous Timekeeper.

Furthermore, under the consistent decisions of this Board, Carrier's decision as to fitness and ability cannot be disturbed unless proved to have been made arbitrarily or capriciously. Such burden of proof rests squarely on the Claimant (Awards 21246, 21243, 21131, 21119, 21009, 20964, 20569, 20361, 19404, and 19129).

Claimant has not met this burden. A thorough and extensive review of the complete record developed on the property, as well as the arguments of the parties, reveals that Carrier's decision not to award the position to Claimant was based on the observations of Claimant's ability and qualifications by Carrier's supervisors. So long as Carrier's supervisors had such opportunity to observe, and there is no showing that any arbitrary or capricious method or procedure was employed by them in making their determination we have no basis on which we could reasonably interfere with the decision made. Therefore, 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

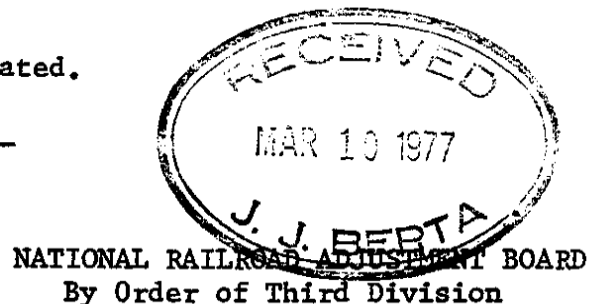
That the Agreement was not violated.

A W A R D

Claim denied.

ATTEST:

A. W. Pauls  
Executive Secretary



Dated at Chicago, Illinois, this 18th day of February 1977.