NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21615
THIRD DIVISION Docket Number CL-21577

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul & Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8128, that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement at Bensenville, Illinois in Seniority District No. 30 when it unjustly treated employe T. J. Curley by failing to award him Relief Caller Position No. 2, and in lieu thereof awarded the position to a junior employe.

2. Carrier shall now be required to assign T. J. Curley to Relief Caller Position No. 2.

3. Carrier shall now be required to compensate employe T. J. Curley the difference in rate of pay of Relief Caller Position No. 2 and that of the position assigned to for each workday retroactive 60 days from date of this claim, 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: This is a fitness and ability dispute, in which Claimant was not awarded a position; a clerk with less seniority and experience was awarded the position in question.

In the unjust treatment hearing accorded Claimant, the evidence indicated that he had been in a number of different clerical and operating positions with Carrier whereas the clerk who was awarded the position of Crew Caller had little experience with the Carrier and no previous railroad background. It must be noted, at the outset, that relative seniority and experience of the rival contenders for a position are not, per se, relevant. The numerous awards on this subject have

clearly established that the judgment as to fitness and ability, which precedes the invocation of seniority rights, is the Carrier's prerogative. When Carrier's judgment is challenged by the Organization, the burden falls on Petitioner to establish, by competent evidence, proof of his fitness and ability. The record in this dispute is devoid of such proof. In the absence of such proof it is impossible for this Board to hold that Carrier's judgment was arbitrary or capricious (c.f. Award 18802 involving the same parties). For the reason indicated, 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 29th day of July 1977.