

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21679  
Docket Number CL-21513

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8026) that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement at Tacoma, Wn. when it unjustly treated employee M. J. Luttrell by disqualifying her on Position No. 80060, Assistant Superintendent's Steno, just six working days after being awarded the position by bulletin.

2) Carrier shall now be required to reassign employee M. J. Luttrell to Assistant Superintendent's Steno Position No. 80060.

3) Carrier shall now be required to compensate employee M. J. Luttrell an additional day's pay at the rate of Position No. 80060 for each workday retroactive to August 22, 1974 and for all subsequent days until the violation is corrected.

4) Carrier shall now be required to pay seven percent (7%) interest compounded annually until such time as claimant receives payment.

OPINION OF BOARD: Claimant herein, with three months of service, bid for and was awarded a position as Secretary to the Assistant Superintendent on August 14, 1974. On August 19, 1974, her second day on the job, Claimant was required to record and transcribe an investigation. On August 22nd she received a letter from the Superintendent as follows:

"After reviewing your transcript of the investigation, conducted August 19, 1974, it is apparent that you do not have the shorthand speed required.

It is with regret I must disqualify you on Position No. 80060-Assistant Superintendent Steno.

May I suggest that you try to work your shorthand speed up to at least 120 w.p.m. and if the job becomes vacant, you may exercise your seniority."

Claimant was subsequently accorded an unjust treatment hearing as provided under the schedule rules. At that hearing it appeared that the investigation in question on August 19th was a relatively slow and simple one. Further, Claimant admitted that she only "got" about half of it. It also developed that she had been solicited by a Carrier officer to apply for the stenographic position and had indicated that her shorthand was rusty at that time. Further, the bulletin for the position did not specify a particular speed standard, merely typing and shorthand were required.

The Organization alleges that two rules were involved in this dispute. Rules 7 and 8 (a) provide:

"RULE 7 - PROMOTION

Employees covered by these rules shall be in line for promotion. Promotion 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 new position or vacancy where two or more employees have adequate fitness and ability."

"RULE 8 - TIME IN WHICH TO QUALIFY

(a) When an employee bids for and is assigned to a permanent vacancy or new position he will be allowed thirty (30) working days in which to qualify and will be given full cooperation of department heads and others in his efforts to do so. However, this will not prohibit an employee being removed prior to thirty (30) working days when manifestly incompetent. If an employee fails to qualify he shall retain all seniority rights but cannot displace a regularly assigned employee. He will be considered furloughed as of date of disqualification and if he desires to protect his seniority rights he must comply with the provisions of Rule 12(b)."

Petitioner argues, inter alia, that Claimant was not given the required cooperation mandated in Rule 8 (a) supra; that she was not given the thirty working days in which to qualify; and finally that she was not shown to be "manifestly incompetent." It is concluded that Carrier's action was arbitrary and unfair.

Carrier argues that Claimant admitted that she was unable to transcribe the investigation which was an integral part of her job responsibilities. The work in question was characterized as a "disaster" by Carrier. It is contended that Rule 8 permits Carrier to remove an employe prior to the thirty working days' expiration if the employe was manifestly incompetent, which was the case here. Carrier also points out that Petitioner has not met the burden of proving Claimant's competence, in view of her disqualification.

The significance of the thirty-day period in Rule 8 (a) was discussed by this Board in Award 18802, involving these same parties and a related dispute:

"Rule 8 concerning the 30 working days time in which an employe has to qualify does not constitute a mandatory duty on Carrier to promote in accordance with seniority only. As stated by this referee, in Award 14976, the only function of such a rule is to make possible the correction of an erroneous acceptance of a position application. ...."

It must be granted that Carrier's action, though somewhat precipitous, did in fact disqualify Claimant. Thus, it devolved on Petitioner to establish that she was qualified to retain the position and was not "manifestly incompetent" as Carrier alleged. No such evidence was presented. This Board has considered similar problems on many occasions. As we said in Award 15494:

"Once Carrier has determined that Petitioner was not qualified to fill a position, Petitioner has the burden of coming forward with evidence of convincing probative value to support his contention as to qualification and the arbitrariness of carrier's action."

We are constrained to support Carrier's position in this dispute, even though we recognize the lack of a bulletined prerequisite requiring specific shorthand skills for this position. There is no evidence whatever to establish that Claimant could perform in the position and there is substantial evidence to the contrary.

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 31st day of August 1977.

