

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21710
Docket Number CL-21847

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8293, that:

1. The Western Pacific Railroad Company violated Rules 29 and 30 (a) & (b) of the Agreement when it failed and refused to allow senior employe Mr. W. S. Ivey to displace junior employe V. G. Prentiss off Job No. Z-4327.

2. The Western Pacific Railroad Company shall now be required to allow Mr. W. S. Ivey one day's pay at rate of Position Z-4327 beginning February 14, 1975, and continuing each day thereafter until he is assigned to the position.

OPINION OF BOARD: The record herein establishes that, at the time Claimant desired to displace on Steno Clerk Position No. Z-4327, he lacked the necessary typing and shorthand skills to properly perform the work of the position.

The record contains no evidence that the typing test administered to Claimant was arbitrary, either in content or administration, or that typing was not directly related to the work requirement of the position he sought. Nothing of record supports Employees' allegation that Carrier's application of the typing test or requiring that a Steno Clerk be able to take shorthand and type was unreasonable.

When one lacks the basic skills required to properly perform the work of a position sought, there is no violence to the provisions of the agreement relative to possession of sufficient fitness and ability entitling the senior employe to a particular position.

As in Award 17192 involving the same parties, we have held that the determination of fitness and ability is a managerial prerogative which will be sustained unless its action is shown to have been arbitrary or capricious. We do not find Carrier's action herein to have been

arbitrary or capricious; however, as to "res judicata," "estoppel by judgment" or "stare decisis," all theories argued by Carrier in support of its case, we must point out that none applies here as each case must be decided on its own merits. Here, Employes failed to produce evidence that Carrier's actions were arbitrary or capricious and therefore the claim will 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

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 29th day of September 1977.