

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21784
Docket Number CL-21697

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8139, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it disqualified Miss Alice J. White from Senior Rate and Divisions Clerk Position I-53 on March 3, 1975; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Miss Alice J. White eight (8) hours' compensation at rate of Position I-53 March 4, 1975 and each date thereafter until restored thereto.

OPINION OF BOARD: Claimant Alice J. White exercised her displacement right into the position of I-53, Senior Rate and Division Clerk, Divisions Bureau of Revenue Accounting, on January 30, 1975, following her displacement from a Rate Clerk position in the Traffic Department.

On March 4 she was notified of her disqualification from the Senior Rate and Division Clerk position, due to her inability to qualify. Claimant then requested an investigation under Rule 50, as permitted an employe who considers himself unjustly treated. Company's action was affirmed upon appeal following the investigation, and her claim for additional 8 hours' pay at the I-53 rate until restored to that position, was denied.

The principal questions are whether claimant received a reasonable time to demonstrate fitness and ability before being disqualified under Rule 36, and whether she was given cooperation in her effort to qualify as required by NOTE to Rule 27. Additional arguments advanced in the submissions of both parties were discounted by this Board as being untimely or irrelevant, in particular, Petitioner's complaint regarding the conduct of the investigation and carrier's reference to later proposed changes in Rule 27. We have not treated lightly the due "process" argument, as a timely showing of gross

unfairness in conducting the investigation would certainly be a strong argument for sustaining the claim. However, when the issues were last addressed on the property the Organization's letters of April 2 and April 16 stated that the investigation held March 17 "fully supports" the Claimant's position and "clearly shows" Claimant's disqualification to have been unjustified. Their only complaint with the investigation expressed on the property, was the Carrier's failure to produce records supporting alleged errors - a point which will be considered elsewhere.

Rule 36 provides, in part:

"An employe who is regularly assigned to a position or makes displacement, and fails, within a reasonable time, to demonstrate fitness and ability shall vacate position on which disqualified...."

Petitioner does not claim that Miss White had demonstrated her fitness and ability when disqualified at the end of her trial period on March 3, but asserts she could "easily have qualified if given reasonable opportunity, but did not get it." Three employe witnesses testified at the investigation that no one could qualify on a Divisions Clerk position in one month's time. Miss White testified that she did not know why she was being disqualified but was told it was lack of volume. But at no point in her testimony does she contend that she was qualified, and the thrust of the testimony of all employe witnesses is directed to their opinion of the conditions under which she could have been qualified.

Two carrier witnesses, its Chief Clerk and its Assistant to the Manager of Revenue Accounting, testified that 30 days was a reasonable time within which to determine if a person has fitness and ability to perform the duties of Senior Rate Division Clerk. They further testified no other employe entering the position had failed during the 30-day period.

Petitioner's arguments for more time emphasize that claimant had never worked in the Divisions area and that this work is especially complicated and difficult. These arguments ignore the point that claimant professed adequate fitness and ability to be placed in the job, and that the ensuing period is a demonstration period and not a training period. Claimant's errors during the period caused her disqualification, two Carrier witnesses testifying that her error rate was higher than other employes performing similar work. Although Petitioner asserts this testimony lacked supporting evidence in the form of Carrier records, it is not prejudicial because claimant acknowledged that she was not qualified on March 3 by her testimony on pages 12 and 13 of the Transcript of the Investigation proceedings.

Petitioner contends the reason for Claimant's lack of qualifications, in addition to the shortness of the period, is the Carrier's failure to give the cooperation required by NOTE to Rule 27. It alleges hostility at the time Claimant first entered the position, and lack of adequate instruction during her time on the job. Evidence of Carrier's efforts to help claimant outweighs the evidence of lack of cooperation, in the Board's opinion. While Claimant was initially assigned to work which she had never performed before, it was work of the position into which she had displaced and she was assigned to a relatively simple phase of the job. The Chief Clerk spent at least an hour with her each day, and five hours with her on the first day according to undisputed testimony. The Chief Clerk and the Assistant Manager testified that her errors were pointed out to her each day.

The record indicates that Claimant was given a reasonable time in which to demonstrate her fitness and ability, and she received cooperation during such period. The Carrier's determination that by March 3 she had not demonstrated her fitness and ability to do the required work is supported by substantial evidence, and is indirectly admitted by testimony of employe witnesses at the investigation.

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 Employee 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

Carrier's disqualification of Claimant did not violate the agreement.

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 18th day of November 1977.