

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21802
Docket Number CL-21690

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8168, that:

1. The Carrier violated the Agreement when on March 4, 1975 it failed to assign Milwaukee Junction Yard Clerk J. Dooley to Relief #5 assignment.

2. Claimant J. Dooley should now be paid eight (8) hours at straight time rate of Relief #5 assignment for March 4, 1975 and each subsequent date until the violation is corrected.

OPINION OF BOARD: On March 3, 1975, Claimant was displaced from his afternoon Crew Dispatcher's assignment. On that same date he submitted notice to displace a junior employe from Relief Position No. 5 which works four days per week relieving yard clerks and one day relieving a keypunch clerk. Carrier denied Claimant's request to displace on Relief Position No. 5 on the grounds he was not qualified to perform keypunch work.

(Before ruling on the merits, we note that resolution of this dispute does not turn on issues both parties improperly raised in their submissions. Forfeited claims cannot be resurrected at this level, nor can consideration be given evidence not presented on the property.)

Rule 8 of the parties' agreement provides:

"RULE 8. TIME IN WHICH TO QUALIFY

(a) Employees entitled to bulletined positions or exercising displacement rights will be allowed thirty (30) working days in which to qualify, and failing, shall retain all their seniority rights and may bid on any bulletined positions, but may not displace any regularly assigned employee except that an employee who fails to qualify on a temporary vacancy may immediately return to his regular position.

"(b) When it is definitely determined, through hearing if desired, that the employee cannot qualify, he may be removed before the expiration of thirty (30) working days.

(c) Employees will be given full cooperation of department heads and others in their efforts to qualify."

The Organization contends this rule mandates the assignment of Claimant to the position sought and if, after assignment, it is "definitely determined" he cannot perform the duties of the position, he may be removed.

Rule 5 of the parties' agreement provides:

"RULE 5. PROMOTION, ASSIGNMENTS AND DISPLACEMENTS

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

The Carrier argues that Rule 5 does not require assignment to a position when an employee manifestly lacks sufficient fitness and ability in the first instance.

Numerous authorities cited by the parties, purportedly supporting their arguments, seem to polarize positions rather than express the intent of the agreement. Rules 5 and 8 must be read in harmony. One cannot be isolated from the other as to do so would place one in a position superior to the other. The agreement specifically does not do so nor is this Board so empowered. When Rules 5 and 8 are read in harmony, employees possessing fitness and ability to perform duties required of a position are to be given opportunity to qualify therefor. The harmonious reading of these rules does not mean that fitness and ability be such that an employee need fully and completely perform the work immediately upon assuming the position, but that it be such that he could do so within the period of time permitted in the

qualification rule. Nor does such reading mean that an employe obviously lacking fitness and ability be given the qualifying time when it is apparent he could not qualify within that period.

Applying the above to this case, we find the Carrier did not adequately demonstrate that Claimant lacked fitness and ability for assignment to Relief Position No. 5; it simply argued that he was not a qualified keypuncher. Carrier never suggested that, given the opportunity, he did not possess sufficient fitness and ability to qualify within the time established by Rule 8. (Claimant, in fact, subsequently qualified as a keypuncher with five days' training.) Thus, the exercise of managerial judgment in denying Claimant Relief Position No. 5 was arbitrary and capricious and without substantive evidence that he could not qualify within the time allowed by the agreement. The agreement was violated and we will sustain Part 1 of the claim.

With respect to Part 2 of the claim, we will award Claimant an amount equal to the wage loss sustained as a result of being denied assignment to Relief Position No. 5, instead of the eight hours for each date as claimed.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pinder
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.