

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21954
Docket Number CL-21682

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8143, that:

(a) Carrier violated the Agreement at Memphis, Tennessee, when it refused to assign Mr. Sam K. Powell to the position of General Utility Clerk beginning August 23, 1974 on the ground that his merit, capacity and qualifications were not sufficient. A junior employee being assigned.

(b) Carrier shall be required to compensate Mr. Sam K. Powell the difference between his rate of pay as Yard Clerk and that of General Utility Clerk beginning August 23, 1974, and continuing until he is assigned to the position of General Utility Clerk.

OPINION OF BOARD: Claimant argues that he should have been assigned to the bulletined position of General Utility Clerk rather than the junior employee whom the Carrier considered more qualified. The record shows that claimant's seniority was approximately two and one-half months' greater than the other employee.

Recognizing the critical importance and necessity of seniority in matters of promotion, transfer, layoff and assignments, etc., the Board carefully examined pertinent agreement rules to ascertain whether or not Carrier complied with the terms and requirements specified therein.

Rule B-7(a) which sets forth the procedures for filling vacant positions under seniority states in part that:

"Except as otherwise provided in this agreement, vacancies covered by this agreement will be filled in accordance with principles defined in Rule B-6 in the following manner, except that merit, capacity and qualifications being sufficient, seniority shall govern."

Rule B-6 requires that promotions which are not filled by seniority shall be filled as follows:

"Qualification, merit and capacity being relatively equal, preference shall be given employees in the service, who have made application, in order of their service age."

Moreover, Note No. 1 appended to Rule B-7(a) prescribes the definitional application of the word "sufficient":

"The word 'sufficient' as used above is intended to establish the right of the senior qualified employees to be assigned to new positions or vacancies covered by Section (a) of this rule over junior qualified employees."

This Board is certainly mindful of the semantical interpretative relationship between the word "sufficient" delineated in Rule B-7(a), further qualified by Note No. 1 (supra), and the phrase "being relatively equal" in Rule B-6, and of course, could devote inordinate hours attempting to balance judiciously competing nuancial constructions. The final evaluative decision regarding selection pursuant to these criteria vests, however, with Carrier, subject to the Rule C-2 grievance appeal process. This rule is particularly invoked when an employe is adjudged not to have relatively equal or sufficient qualifications, merit and capacity for a position on which he has submitted a bid and a junior employe has instead been selected. The burden of proof in establishing appropriate credentials thus rests with the aggrieved.

In the instant case, claimant requested and was granted a hearing to determine his fitness for the General Utility Clerk's position. It was found that he had worked 5 or 6 hours in this employment responsibility on each of two days that the job was bulletined as compared to the more extensive experience of the junior employe. The latter, for instance, worked 69 days in this position since 1969 as well as 509 days in various agency positions.

Perhaps innate potential would suffice to justify claimant's presumptive qualifying bona fides, but we think that Rule C-2 requires a greater substantive showing of sufficient or relatively equal ability than mere assertions of experience, aptitude or putative capacity. We have not found that claimant provided that degree of proof that would convincingly substantiate his averred qualifications, nor have we found that Carrier acted capriciously, arbitrarily or unreasonably

in this selection. There are numerous Third Division rulings on point with this holding. See Awards 15784, 21055 and 21507.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 15th day of March 1978.