

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22025  
Docket Number CL-21669

Robert J. Ables, 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-8126, that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement at Milwaukee, Wisconsin, when it unjustly treated Linda Borgwardt by refusing to assign her to Position #34080 on March 12, 1975 and instead assigned junior employee Mila Jovanovic.

2. Carrier shall now be required to assign Employee Borgwardt to Position #34080 and compensate her with one day's pay at the rate of that position commencing March 12, 1975 and continuing until the violation is corrected and Employee Borgwardt is assigned to the position.

OPINION OF BOARD: The Carrier was inconsistent in applying the promotion rule, but it did not violate the rule because it determined by an objective test that Claimant did not have requisite ability to perform the job.

Claimant bid for a posted 30-day (temporary) job as a steno clerk. She was the senior employee bidding for the job. The Carrier found she was not qualified for the job because, upon test, she could not take shorthand more than 60 words per minute where the standard for the job was 80 words a minute. The Claimant was invited to take the test again but she did not do so.

Claimant argues under Rule 7 she was not given an opportunity to qualify for the job. This rule provides:

"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.

Claimant's reliance on this rule for an opportunity to qualify for the posted job is misplaced. Rule 7 gives the senior employee preference over junior employees for promotion, if the senior employee has already been determined to be fit and able to do the job. This is a relatively strong seniority rule because the senior employee need not be overly concerned the employer will promote a junior employee if the junior employee is significantly more fit and able to perform the job than the senior employee. The senior employee only has to demonstrate that his fitness and ability is "sufficient." And this term is defined.

But, in this case, Claimant did not show she had requisite ability to do the job so there is no question about presumptions in favor of the senior employee in a promotion situation.

Claimant also relies on Rule 8. In this rule, an employee who bids for "and is assigned" to a permanent vacancy will be allowed 30 days in which to qualify and the Carrier is obliged to cooperate in helping that employee to qualify for the job.

Reliance on this rule by the Claimant is again misplaced.

The rule does not apply in this dispute because the job in issue is a temporary job, thus there is no requirement on the Carrier to give Claimant a grace period to qualify for the job - and, of course, she never was actually assigned to the job in dispute.

These findings in favor of the Carrier are sufficient to deny the claim, but the claim was not frivolous. Inexplicably, after the Carrier determined that Claimant was not qualified for the 30-day steno clerk job (position number 34080), the Carrier did assign Claimant for three days to the very same bulletined job. Carrier's explanation that shorthand was not required on the three-day job as reason why Claimant was awarded the second temporary job and denied the first can only add confusion in the administration of an important and difficult rule on relative weight to be given seniority, fitness and ability, in a promotion situation.

Rigid consistency in the application of contract rules has its disadvantages but the Claimant here had reason to complain about not getting the first job following the Carrier's inconsistent application of the same rule for the same employe for the same job. Carrier's consistency here, either to award or deny both jobs, would have helped prevent this dispute. But, for the reason that Claimant did not show she was qualified for the first job, 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.