

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22782
Docket Number CL-22787

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-8728)
that:

(1) The Carrier violated the Agreement, when on December 22, 1977, it failed to assign Battle Creek Clerk Mr. J. D. Bradley to 1600 Operator assignment.

(2) Claimant Mr. J. D. Bradley should now be paid eight (8) hours at straight time rate of 1600 Operator assignment for December 22, 1977, and each subsequent date thereafter until violation is corrected.

OPINION OF BOARD: Claimant was denied displacement rights to the 1600 Telegraph Operator's position on the grounds that he lacked the requisite ability and fitness requirements to fill the job. Claimant contends that Agreement Rules 4, 5 and 8 and Paragraph 2(G) of the April 24, 1964 Memorandum of Agreement were violated when Carrier refused to permit him to displace a junior employee as a result of force reduction.

Carrier, contrawise, argues that Claimant was not qualified for the position and could not qualify for the position within the time parameters of Rule 8. Rules 5 and 8, which are quoted hereinafter provide the integrated interpretative framework for construing the bona fides of this dispute.

Rule 5 - Promotion, Assignments and Displacements reads:

"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."

Rule 8 - Time in Which to Qualify provides that:

- "(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."

In the instant case, we agree with Claimant, after carefully reviewing the fact specifics regarding his employment history, that Carrier misapplied these rules when it denied him displacement rights. We find, upon the record, that he competently demonstrated that he possessed sufficient skills and mental dexterity within the judicially defined meaning of Rule 5 (Supra) to qualify for the 1600 Telegraph Operator's position pursuant to the explicit time limitations set forth in Rule 8 (Supra).

Claimant had previously written the "A" book of the Uniform Code of Operating Rules and was experienced supervising train yard operations. Moreover, there is no tangible or persuasive evidence that he could not qualify for the position. In Third Division Award 21802, involving the same parties, we held in pertinent part that:

"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 employee obviously lacking fitness and ability be given the qualifying time when it is apparent he could not qualify within that period."

We believe this principle applies here and thus we will sustain Part 1 of the claim. On the other hand, we will award Claimant an amount equal to the wage loss sustained as a result of Carrier's denial action 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 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 violated.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1980.