

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22980
Docket Number CL-22880

Robert A. Franden, 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-8740)
that:

- 1) Carrier violated, and continues to violate the Clerks' Rules Agreement at Chicago, Illinois when it denied Employee K. O. Sveen his right to exercise seniority to Position No. 15940, Rate Check Clerk in Seniority District No. 1.
- 2) Carrier shall be required to compensate Employee Sveen the difference in the rate of pay of Position No. 15940 and his present position commencing on November 29, 1977 and continuing for each workday that he is denied his seniority, promotion and displacement rights.
- 3) Carrier shall pay Employee Sveen interest at the rate of 7½% compounded annually on the anniversary date of this claim on the amount due in Item 2 above.

OPINION OF BOARD: Claimant was displaced on his position as Rate Analysis Clerk by a senior employee. Claimant then announced that he desired to exercise his seniority and displace a junior employee on a Rate Check Clerk position. The Carrier disapproved such displacement on the grounds that claimant did not possess sufficient fitness and ability to perform the functions of the position. It is the denial of the right to exercise his seniority on that position that forms the basis for this claim.

Rule 12 of the Agreement establishes the fitness and ability criteria for the exercise of seniority in situations such as that in the instant matter. It is axiomatic that the Carrier has the prerogative of determining fitness and ability and that absent a finding that its determination was arbitrary and capricious we will not disturb same. From the record we are unable to find that the Carrier's determination was arbitrary or capricious and hence will not sustain the claim. To the contrary, it was shown that Carrier based its decision on an objective review of claimant's past performance.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.