NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23047
Docket Number CL-22907

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8756) that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Seattle, Washington commencing on July 20, 1977 when it failed to assign Position No. 89760 to employe Donald G. Olson.

2) Carrier shall be required to recognize Donald G. Olson's seniority, promotion and displacement rights, assign him to Position No. 89760 and compensate him for an additional day's pay at the appropriate rate for each workday he is denied his contractual rights to that position.

3) Carrier shall pay employe Olson 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: The pivotal question before this Board is whether Carrier appropriately applied the "sufficient fitness and ability" test as required by Agreement Rule 7 and our judicial interpretative standards regarding its application. Claimant contends that Carrier violated the Clerk's Rules Agreement when it didn't award him the Revising Clerk - Grade A position No. 89760 in Seniority District No. 45 in July, 1977. An investigative hearing was held on August 18, 1977 to determine whether said rejection was predicated upon meritorious considerations and Agreement Rules support. Carrier affirmed its original denial decision upon this record and Claimant appealed this disposition.

In our review of this case, particularly the detailed investigative transcript we find substance to Claimant's contention that he possessed the minimum fitness qualifications to be given an opportunity to qualify for this position, consistent with the explicit purpose of Rule 8. We concur with Carrier that Rule 7 vests it with the exclusive right to render this determination, but this does not presuppose that credentialling or fitness and ability evaluation will be solely based upon experience. It is one criter-

ion among others, albeit an important one, that must be objectively considered in the selection process. To be sure, it would be desirable for an employer to select the most efficacious human resource available, but selection decisions are further qualified by law, such as the Civil Rights Act of 1964 as amended, which is not at issue here and negotiated Rules in collective bargaining agreements, which are at issue here. The intent of Rule 7 is not to insure that the most qualified person will be selected, but that employes with senior tenure status will be given the position as long as they possess "sufficient fitness and ability", not superlative qualifications. Admittedly, in this case, Carrier was somewhat unaware that Claimant had completed one (1) year of schooling at the Renton Vocational Technical Institute and was certified as having completed the Transportation and Management Course. But he did apprise his supervisor that he undertook this course of instruction and under the circumstances of his bid application, the supervisor should have reviewed more critically his purported fitness.

Moreover, we recognize that he never worked in a position which required him to research the tariff schedule, find an applicable rate and apply it to a waybill. But he did testify that he prepared corrections, assisted in maintaining tariff files, applied codes, trained as a Revising Clerk - Grade B and worked with switching tariff, diversion tariff, weighing tariff, weighing tariff demmurage tariffs, lumber tariffs, transit tariffs and this experience was never shown to be irrelevant to the skills needed by the Revising Clerk - Grade A. The bid specifications did not require any prerequisite number of years of prior experience and the supervisor's testimonial delineation of position duties were not listed on the bulletin of the list of principal duties. When the above facts are correlated with the supervisor's refusal to identify the name of a prior supervisor who advised him that Claimant never rated from a tariff and applied said rates to a waybill, we have an incomplete and suspect record. This Board certainly does not have the qualifications to determine what technically constitutes "sufficient fitness and ability" for a particular employment position. This is singularly a Carrier prerogative. (See Third Division Awards - 21385, 21119, 18802, 17141 and 16309). But we have the judicial authority to decide whether an employer was arbitrary in the exercise of this judgement. In many of our decisions on seniority and qualifications issues we have held that it was incumbent upon the Petitioner to demonstrate that he possessed "sufficient fitness and ability" for a contested position. We find in this case, that Claimant adequately demonstrated that he had the minimal abilities to be given an opportunity to qualify consistent with Rule 8.

In Third Division Award 21802, which is conceptually on point with this dispute, we held, in pertinent part, after discussing the importance of reading seniority, promotion and time in which to qualify provisions as an interrelated whole, that:

". . . 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."

We find this ruling applicable here. Carrier did not establish to our satisfaction that Claimant's training and experience were superfluous or so inadequate that a reasonable person could conclude that he did not possess sufficient fitness and ability for the Revising Clerk - Grade A Position No. 89760. We believe that it acted arbitrarily when it denied him this position and did not allow the thirty (30) days time in which to qualify as per Rule 8. 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 this position instead of the additional day's pay at the appropriate rate for each workday he was denied this position. We find no basis for the third (3rd) part of the claim and we will reject it.

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 violated.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

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