

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23051  
Docket Number CL-22911

George S. Roukis, 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-8760) that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Seattle, Washington commencing on July 11, 1977 when it failed to assign Position No. 89740 to employee M. D. Jones.

2) Carrier shall be required to recognize Marvin D. Jones' seniority, promotion and displacement rights, assign him to Position No. 89740 and compensate him for an additional day's pay at the appropriate rate for each work day he is denied his contractual rights to that position.

3) Carrier shall pay employee Jones 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: This dispute is similar to the claim filed by Claimant Don G. Olson for the Chief Revising Clerk's position No. 89740 bulletined on June 30, 1977 and awarded to a junior employee on July 11, 1977. The Claimant in this instance, Marvin D. Jones, a Grade B Revising Clerk at the time this claim was initiated, contested Carrier's selection of Ms. Linda Turner for this position and requested an unjust treatment hearing pursuant to Rule 22(F) to determine whether Carrier's decision was alternatively proper or capricious. The aforesaid hearing was held on August 18, 1977 and Carrier subsequently apprised Claimant by letter, dated August 23, 1977 that his rejection was unbiased. Specifically the letter, which was written by the hearing officer, stated in part that: "Testimony which was given at the investigation does not substantiate your contention of unjust treatment, therefore, it is my decision that your charge was and is without factual or schedule rule support." This disposition was appealed.

In our review of the record, we agree with Carrier's position. Claimant did not possess the varied experience and skills needed for this job. It required significant Revising Clerk - Grade A position experience, which necessitated the supervision and training of Grade A and Grade B Revising Clerks, work competency evaluation, the maintenance of tariff files and

the application of codes. Importantly it required the incument to rate tariffs, which presupposed experience, not interest. Admittedly, Claimant asserts that he performed analogous duties, but their substantive quality was indicative of potential not definable fitness. In fact, Carrier supervision found him unqualified to perform the Chief Revising Clerk's functions. His experience included being an operator, an extra load operator, a switching and interchange clerk and assignments TOFC work. He testified that he had never been required to go into rate tariff to move a commodity from one location to another, although he noted that he was required to work from tariffs and furnish rate information. He stated that he wanted to get into the regional accounting department "to begin to learn rates", an important and critical function of the Chief Revising Clerk. Clearly from the record, it becomes difficult for this Board to conclude that he was sufficiently fit and qualified for this position as per the intended meaning of Rule 7. At best, we find a "potential" that is arguably debatable. In Third Division Award 10345, which we feel is pertinent to our findings herein, we stated in pertinent part:

"It is difficult to conclude on the record that the Carrier was unreasonable, partial, arbitrary or capricious in determining, under all the circumstances, that Claimant was not sufficiently qualified. The Carrier is under no obligation to undergo the hazard and expense of the qualifying period provided in Rule 25, unless the Senior has something else to offer other than potentiality."

Applying this holding to the case before us we find that Claimant's qualifications represent more potential than an unmistakable demonstration of sufficient fitness and ability and Carrier's rejection of his position bid application was without bias and consistent with its prerogatives.

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.

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Claim denied.

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By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

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