

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23064
Docket Number CL-22662

Joseph A. Sickles, 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-8632) that:

1) Carrier violates, and continues to violate, the Clerks' Rules Agreement in Minneapolis, Minnesota when it arbitrarily and unjustly denied Employee James E. Marsh the right to displace on Position No. 10010, General Clerk, on January 11, 1977.

2) Carrier shall be required to assign Employee James E. Marsh to Position 10010, General Clerk, in the Division Manager's office and compensate him additional eight (8) hours pay at the pro rata rate of Position 10010 commencing on January 11, 1977 and for each subsequent workday he is denied displacement thereon.

3) Carrier shall be required to pay 7½% interest to be compounded annually on the anniversary date or dates of this claim, computed on the amount due in Item 2 above.

OPINION OF BOARD: When the Employee's position was abolished, in order to become familiar with the duties and responsibilities of a different position the Claimant devoted approximately seven (7) days of his own time in an effort to learn the work of said position before he attempted to exercise displacement rights.

On January 10, 1977 the Employee attempted to take over the duties, but his request was denied. Thereafter, he requested and was granted an unjust treatment investigation, however the Carrier continued to assert that the Employee lacked sufficient fitness and ability for the position in question, which prompted this dispute.

Rule 7 specifies that promotions shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Thus, the Organization asserts that said rule gives the senior employee preference over junior employees for promotion, providing the senior employee has been determined

to be fit and able to perform the duties assigned to the job. Accordingly, the Organization asserts that this Employee's capabilities are not to be compared with the fitness and ability possessed by junior employees, and because this Claimant has demonstrated the potential to perform all the duties of the position within a reasonable time, given the assistance and guidance of department heads and others, the claim should be sustained.

The Carrier reminds us that the Employee conceded, at the investigation, that he had never worked in a position of the nature involved herein and that he could not do the job as well as the then current incumbent.

The Carrier made the determination that the Employee did not possess the requisite fitness and ability to perform the job and, thus, it became incumbent upon the Employee to demonstrate to the contrary.

We have reviewed the rather extensive record, and we are unable to find evidence that this Employee has presented information which suggests that the Carrier's determination was not properly arrived at. Accordingly, we will deny the claim.

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;

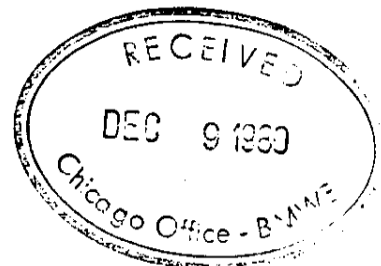
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein;

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. Pauls
Executive Secretary

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