

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23088
Docket Number CL-22525

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Railroad Perishable Inspection Agency

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8550)
that:

(a) The Company violated the Rules Agreement, effective January 1, 1948, especially Rule 10 of this Agreement, when it would not allow Claimant K. D. Walls to displace a junior employee on his seniority roster on November 15, 1976.

(b) Claimant Walls should be restored to service and paid for all time lost during the period he was arbitrarily denied his displacement rights over a junior employee, beginning November 15, 1976 and to run continuously until this dispute is settled.

OPINION OF BOARD: Claimant K. D. Walls was employed by the Railroad Perishable Inspection Agency as a Cooper. His Cooper position was abolished on November 24, 1976 and he attempted to exercise displacement rights to a position of Inspector-Condition and Breakage which was held by a junior employee. Carrier denied Claimant's request on the basis that he did not possess the necessary fitness and ability required for the Inspector position.

The applicable Agreement Rule in this dispute is Rule No. 6 which reads:

"Promotions through bidding and displacement under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

This same rule between these same parties involving this same type of situation, i.e., Cooper vs. Inspector-Condition and Breakage, was decided by the Board in Award No. 16480. In that Award we said:

"This Board has been petitioned to interpret and apply rules identical or similar to Rule 6 in a great number of disputes. In essence we have held in such cases that: (1) the current possession of fitness and ability is an indispensable requisite that must be met before seniority rights become dominant; and (2) this Board will not set aside Carrier's judgment of fitness and ability unless it is arbitrary or capricious or has been exercised in such a manner as to circumvent the Agreement. See, for example, Award No. 11941, 12461, 13331, 14011, 15164. Also, we have held that for us to set aside a Carrier's judgment the record must contain substantial evidence of probative value that the claimant employee possessed, at the time, sufficient fitness and ability to perform the duties of the position which he sought. Id.

"The record in the case before us is barren of evidence that would support a finding that Claimant possessed the indispensable fitness and ability. In fact the record as a whole can be construed as an admission by Claimant that he was lacking in the requisite. For the foregoing reasons we will deny the claim."

X-1 In this case too, Petitioner has failed to sustain the burden of showing by substantial probative evidence that claimant did possess the requisite fitness and ability or that the decision of the Agency was arbitrary or capricious. See also Third Division Awards Nos. 21243, 21328, 22029.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.