

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23214
Docket Number CL-22815

George E. Larney, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8778) that:

1. Company violated the agreement between the parties effective June 6, 1977, and each date thereafter, when Company failed to assign Clerk B. W. Sugg, the senior applicant, to Position No. 413, and instead assigned Junior Clerk T. A. Phillips to the position.

2. Company shall now be required to assign Clerk B. W. Sugg to Position No. 413, and compensate Clerk Sugg at the pro rata rate of \$55.26 per day, beginning on June 6, 1977, and at the rate of \$58.87 per day, beginning on July 1, 1978, (The \$58.87 represents a 4% general wage increase and a cost of living increase), and continuing for each date thereafter, that Clerk T. A. Phillips is allowed to remain on Position No. 413, or until Clerk Sugg is assigned to the position.

3. Company shall also compensate Clerk B. W. Sugg an additional \$3.00 per day, as provided in Rule 8(b) of the Agreement, due to his being withheld from the position.

OPINION OF BOARD: On May 20, 1977, Carrier posted Bulletin No. 79 wherein bids were solicited to fill a permanent vacancy for Position No. 413, Steno-Clerk, in the Marketing Department of the Traffic Office located at St. Louis, Missouri. The job description for this position read as follows:

"Must be competent stenographer, operate switchboard, file, handle mail, review and analyze traffic reports, trace cars, perform general clerical work, and other related duties as assigned."

Among the applicants submitting bids for this position were the Claimant, Mr. B. W. Sugg, with seniority date of June 5, 1969, and Ms. T. A. Phillips, with seniority date of June 7, 1976. Both applicants were employed on the same Division at Carrier's facility located at East St. Louis, Illinois. At the time each tendered their bid, the Claimant had held the position of Steno-Clerk as listed on Carrier's Clerical seniority roster for three (3) years in the Mechanical Department while Ms. Phillips, the junior employee ultimately awarded Position 413 had worked as a Steno-Clerk for approximately, but less than, one (1) year.

The Organization protests the Carrier's action of awarding position No. 413 to the junior employee on the grounds that Claimant possessed sufficient fitness and ability to perform the job. In support of its argument, the Organization relies primarily on Rule 6 of the Controlling Agreement bearing effective date of November 1, 1974, which reads as follows:

"Rule 6

PROMOTION

(a) Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

(b) The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

The Organization asserts Carrier rejected Claimant's bid on the basis he did not possess sufficient fitness and ability to perform only that part of Position No. 413 requiring stenographic and typing skills. The Organization asserts the stenographic duties of Position No. 413 were not a major part of the job as the former employee in that position was not a stenographer. But aside from this assertion, the Organization contends Carrier's judgment was, in fact, wrong and that Claimant did possess sufficient fitness and ability insofar as his stenographic skills were concerned, notwithstanding the less than acceptable score Claimant attained on a test administered by Carrier to measure his stenographic capabilities. In support of this contention, the Organization cites three (3) investigations Claimant was given responsibility for taking the entire record of proceedings and notes Claimant attended shorthand classes in the Spring semesters of 1973 and 1974, at a Community School in which he acquired fifty (50) clock hours of instruction. The Organization asserts that taking transcripts of investigative hearings requires a greater degree of stenographic ability than that needed for Position No. 413. While the Organization agrees Claimant's stenographic skills may have become rusty, this was no reason for Carrier to have rejected his bid especially in light of its obligations under Appendix H, Section 11 of the Merger Agreement to provide training for employees not immediately qualified for the bid position and under Rule 10 of the Controlling Agreement which provides for a thirty (30) day trial period on the bid position. Pertinent parts of Section 11 and Rule 10 respectively read as follows:

"Rule 10

QUALIFYING

(a) An Employee awarded a bulletined position who fails to qualify within thirty working days shall retain his seniority rights and will be returned to his former position or status no later than thirty-six hours after removal from the position on which he failed to qualify....

...

(c) Employees awarded or displacing on regular positions, and employees breaking-in on regular positions through their own desire, will be given full cooperation by supervisors and other employees in their efforts to qualify."

"Section 11 - Training

(a) 'Protected Employees' making application for, or exercising displacement rights to a position, will, if not immediately qualified, be trained for such position for a period of no less than thirty (30) calendar days, following which the employee will be assigned to the position and allowed thirty (30) working days in which to demonstrate his competency to satisfactorily perform the duties thereof.

(b) Training shall be of a type and nature which shall prepare the employee to fulfill the minimum qualifications of the position or positions for which training is allowed.

(c) The cost of training including instruction or tuition, textbooks, and study material and supplies shall be borne by the Company.

(d) Employees shall be compensated for such training either at the rate of pay of the position for which he is being trained or at his protected rate, whichever is greater.

(e) This Section will terminate five years after the date of this Agreement."

With regard to Claimant's typing skills, the Organization takes the position Claimant's score of forty-seven (47) words per minute did, in fact, meet minimum requirements as set forth in Chapter 10 of the IOG Employment Procedures Manual which reads as follows under the section titled "Typing Test":

"A typing test should be administered to any applicant being considered for a position involving the use of a typewriter. The volume of typing should determine the minimum qualifying score acceptable. On some positions, where typing duties would be minimal, the typing test should be given to ascertain the applicant's familiarity with a typewriter and the touch system. On the other hand, for a position requiring lengthy detailed reports, a net score of forty-five words per minute is recommended as a standard for entrance into service."

Finally, the Organization submits that Claimant, with his three (3) years of experience as a Steno-Clerk, was better qualified than the junior employe, with her very short service, to perform the other duties of Position No. 413, especially those tasks associated with analyzing traffic reports and tracing cars. As the Claimant possessed the basic knowledge and skill of Position No. 413, the Organization further submits he could have performed the work of said position within a reasonable period of time.

The Carrier takes the position that it is management's right to determine the requirements needed for a specific job position and the qualifications necessary on the part of those bidding to fill the job. The Carrier defends its actions of setting a requirement of 110-120 words a minute shorthand for Position No. 413 on the basis that its business has been in decline for several years during which there has been a reduction of clerical forces. Therefore, argues the Carrier, it is not at all unusual that requirements for a particular job will change and that the remaining positions must of necessity perform duties previously assigned to others. The Carrier submits that based on the test scores achieved by Claimant with regard to his typing and shorthand skills, he did not possess the required fitness and ability to perform Position No. 413 and therefore it properly awarded the position to the qualified, but junior employe, Ms. Phillips in accord with Rule 6 of the Controlling Agreement. The Carrier maintains that the typing and shorthand skills Claimant needs to perform his incumbent position of Steno-Clerk in the Mechanical Department are minimal and notes that of the three (3) investigative hearings which Claimant transcribed, two (2) of the hearings he used a tape recorder in addition to his notes and in the remaining one, the proceedings occurred at a pace which accommodated his ability to record the information. With regard to

Claimant's typing skills, Carrier notes that the test score of 47 words-per-minute fell below the required level of proficiency of 55-60 words-per-minute established for Position No. 413. Thus, Carrier states that when it was confronted with Claimant's shorthand and typing tests results, it concluded there was no reasonable basis to believe Claimant could reach the required level of proficiency in these skills by practicing on the position. In conjunction with this latter point, Carrier asserts it is under no obligation to place an employe in a position when the evidence shows the employe does not possess the required skills and there is no basis for believing that he will acquire those skills within a reasonable period of time. The Carrier asserts that in its judgment, notwithstanding Claimant's fifty (50) clock hours of shorthand instruction, Claimant would require at least 150 additional clock hours of instruction to possibly bring him up to minimum standards. As to the Organization's contention Claimant was entitled to training for the position under Section 11 of the Merger Agreement reproduced in part above, Carrier asserts any right Claimant may have had was waived by him for failure to request such training within sixty (60) days of June 3, 1977, the date Ms. Phillips was awarded Position No. 413. Finally, Carrier asserts, given the deficiencies of Claimant's skills in typing and shorthand when matched against the requirements of Position No. 413 involving heavy correspondence, its actions of awarding the position to the junior employe was contractually proper especially in view of the fact the Organization failed to demonstrate its actions in this matter were arbitrary and/or capricious.

Based upon a thorough review of all the arguments and evidence of record, the Board concurs in the following:

1. Carrier has the right to evaluate the fitness and ability of those bidding on advertised positions.
2. Carrier was well within its rights to readjust and set what appear to be higher standards for Position No. 413 in the shorthand and typing area than previously existed prior to the posting of the position.
3. Claimant's test scores associated with measuring his shorthand and typing capabilities did show him to be deficient in these skill areas required for Position No. 413.

However, notwithstanding the above points, it appears Carrier's evaluation and ultimate judgment as to which of the applicants were fit was confined to, and strictly centered on, the skills associated with only part of the overall duties of Position No. 413. Nowhere in the record before us has the Carrier demonstrated that the heavy correspondence tasks

of Position No. 413 constituted a disproportionately higher share of all the duties required to be performed in the position. Neither has the Carrier successfully refuted the Organization's position that the junior employe awarded Position No. 413 had no prior experience in performing tasks other than shorthand and typing assigned to Position No. 413, while in fact, the Claimant had such experience. There is no question Claimant's established scores in shorthand and typing were deficient, yet a preponderance of the evidence suggests Claimant did have the potential ability, based on past assignments in these two areas on his incumbent position, to achieve a much higher level of proficiency. Thus, based on Claimant's past experience in performing tasks assigned to Position No. 413, his past classroom instruction in shorthand, and his previous level of attainment in the typing and shorthand skill areas, Claimant was, according to the judgment of this Board, contractually entitled to receive the training guarantees under Section 11 of the Merger Agreement including the thirty (30) day trial period on Position No. 413 to demonstrate his competency to satisfactorily perform the duties thereof.

Carrier is directed to provide Claimant, B. W. Sugg, training comparable to that which would have been made available under the now expired Section 11 of the Merger Agreement for Position No. 413. Following said training, Claimant shall be given a thirty (30) day trial period on Position No. 413 to demonstrate his competency to satisfactorily perform the duties thereof. Following the trial period, Carrier shall then determine whether or not Claimant possesses the required fitness and ability to perform the required tasks of Position No. 413.

Carrier is ordered to pay Claimant the difference between the pro rata rate he has received on his incumbent Steno-Clerk position and the pro rata rate he would have received had he been awarded Position No. 413, beginning on June 6, 1977 through the effective date of this award.

Claimant is not entitled to receive any additional compensation, specifically \$3.00 per day as requested, as Rule 8(b) is found by us to be inapplicable to the instant dispute.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.