

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23249
Docket Number CL-23340

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8992) that:

1. The Western Pacific Railroad Company violated Rules 29 and 30 of the Agreement when it failed and refused to assign employee Donald Price to Transit Clerk Position Z-0051 but, instead, awarded it to junior employees C. A. Thomas, and,

2. The Western Pacific Railroad Company shall now be required to allow Donald Price the difference in earnings lost because of the non-assignment from January 2, 1979 and continuing each day thereafter until Rules 29 and 30 are complied with and is assigned to Position No. Z-0051, Transit Clerk.

OPINION OF BOARD: Claimant was not promoted to the transit clerk position, instead a junior employee by three-and-a-half years was so promoted. The Carrier notified the claimant that its decision was made not on seniority alone, but pursuant to Rule 29 on the basis of seniority, fitness, and ability. The Organization asserts that the Carrier was arbitrary and capricious in determining that the claimant's fitness and ability were not sufficient.

The Organization raises the issue that Rules 29 and 30 must be considered together which requires that the claimant be granted a thirty-day appointment to the position on a trial basis.

Rules 29 and 30 provide as follows:

"PROMOTIONS, ASSIGNMENTS, AND DISPLACEMENTS
RULE 29. Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. When an

"employee junior to other applicants is assigned to a bulletined position, the senior employees making application will be advised the reason for their non-assignment if they request such information in writing and file it within 15 days from date of assignment.

NOTE: The word 'sufficient' is intended more clearly to 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."

**"FAILURE TO QUALIFY
RULE 30 (As Revised 8/1/75).**

(a) Employees entitled to bulletined positions or exercising displacement rights will be allowed thirty (30) working days in which to qualify, and failing, shall retain all their seniority rights and may bid on any bulletined position but may not displace any regularly assigned employee.

An employee who fails to qualify on a temporary vacancy may immediately return to his regular position.

(b) Employees will be given full cooperation of department heads and others in their efforts to qualify.

(c) An employee may not be disqualified before the expiration of thirty (30) working days without a prior hearing being held unless the employee and the Division Chairman or General Chairman waive such hearing.

(d) Employees who are disqualified under this rule on other than temporary vacancies and who have not bid for and been assigned to a bulletined position within thirty (30) days following disqualification, shall thereafter be considered as furloughed and subject to the provisions of paragraphs (b), (c) and (e) of Rule 40."

We do not conclude from a reading of Rules 29 and 30 that in every instance the senior employe must be given a thirty-day trial period, prior to the promotion of a junior appointee to a position. Such an interpretation would do violence to the clear language in Rule 29 which allows the Carrier to make a determination with respect to the fitness and ability of an applicant for a position and thereafter not appoint a person who is not qualified. Carried to its logical conclusion, the position of the claimant could result in a disruptive series of thirty-day trial periods of obviously unqualified persons before a qualified person is put in the position.

The determination of fitness and ability is a managerial prerogative which will be sustained unless its action is shown to have been arbitrary or capricious.

The record does not show that the Carrier was arbitrary and capricious in making this determination. The Carrier, because of the nature of this position involving complex accounting procedures has, in the past, selected persons with extended experience when promoting to the position of transit clerk. While extended experience cannot be the only factor in determining fitness, it can be a significant factor when the nature of a position is taken into consideration. The positions occupied by the claimant have been mostly entry level, and at the time of the bid on the transit clerk position, he was still learning to be a rate and division clerk, being classified as a junior in that position. It is apparent that the claimant was still very much in the early stages of being trained for the subsidiary position.

Since the record does not show that the Carrier's actions were arbitrary or capricious and since there is no absolute requirement that an employe whose employment record does not establish fitness and ability be granted a thirty-day trial period, the claim will be denied.

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

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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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1981.

