

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23276
Docket Number CL-23231

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8932)

1. Carrier violated the effective Clerks' Agreement when it failed to assign Job No. 151 to Mr. James Brightbill, effective July 14, 1978.

2. Carrier shall now compensate Mr. Brightbill for eight (8) hours' pay at the pro rata rate of Job No. 151, which is in addition to any other earnings, commencing on July 14, 1978 and continuing for each and every day thereafter that he is denied this position.

OPINION OF BOARD: In our review of this case, the pivotal question before this Board is whether or not Claimant was qualified to perform the duties of Job No. 151, Telephone Operator, Steno-Clerk, when he applied for this position on July 13, 1978 or reasonably could have qualified for this position, consistent with the requirements of Agreement Rule 29 (Failure to Qualify). An ancillary question is whether Carrier modified its selection standards, when it did not maintain the position as a non-stenographic job and instead awarded the position to a new employee, who admittedly was proficient in stenography.

The record shows that Claimant was not skilled in stenography at the time he applied for this position and subsequently performed poorly when he took the stenographic phase of the three (3) part typing test on May 7, 1979. He required approximately two and one-half (2½) hours to transcribe and type ten (10) minutes of dictation. When he was offered another opportunity to take the stenographic test on May 9, 1979, he refused to be tested because he concluded that he was unqualified in this discipline. On this day as a matter of record, he exercised his seniority to Job No. 280. Recognizing his skill deficiency, we do not believe that he could realistically qualify for this position within the time parameters of Rule 29. It would require more time than is allowed by this provision to develop the acceptable competency level standards. This does not mean that Claimant could not eventually qualify for this position, but only that a longer period of preparation is required. A minimal level of proficiency was needed to fill this position on a trial basis.

On the other hand, we cannot conclude that Carrier violated the Agreement when it changed its selection criteria and manifestly required applicants to possess stenographic skills. It had the right to insist that the incumbent of the position be able to fulfill all of the duties of the job, irrespective of past hiring observances and was not enjoined to design the position to fit the incumbent's qualifications. In Third Division Award 12419 which conceptually parallels this case, we held in pertinent part that:

may have waived the stenographic requirements of the position from time to time but this, in and of itself, was no waiver of its right to demand of anyone seeking, or indeed, occupying the job, that he possess all the required qualifications. This is not determination; it is a privileged exercise of managerial discretion."

This holding is foursquare on point with the facts herein. Carrier was within its right when it required the incumbent of Job No. 151 to be proficient in stenographic skills. 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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1981.