

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23942
Docket Number CL-23957

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9366) that:

(1) Carrier violated the Agreement between the parties when on April 9, 1979, it assigned temporary Ticket Agent position C-065, Pittsburgh, Pennsylvania, to junior employee T. L. Couch, thereby excluding senior employee Mary A. Collavo who submitted a bid for the position in accordance with said Agreement, and

(2) As a result of such impropriety, Carrier shall be required to compensate Claimant M. A. Collavo eight (8) hours' pay at punitive rate beginning April 16, 1979, and continuing each subsequent work date that a junior employee is allowed to perform service on Ticket Agent position C-065 at Pittsburgh, Pa."

OPINION OF BOARD: This is a fitness and ability dispute in which the Claimant was adjudged lacking in ability to handle a temporary position of Ticket Agent at Pittsburgh; an employee with less seniority was awarded the position.

The record indicates that the Claimant, at the time of the vacancy had some thirty-five years of service with Carrier. She had spent most of that time as a messenger or janitress. For a period of nine months she had previously worked the position in question in this dispute and for an additional period of some twenty months had worked a less demanding job as a ticket agent at another location (both positions had been abolished). The record indicates further that Carrier officials, in observing her work as a ticket agent, had come to the conclusion that her abilities were such that she would never be able to master the assignment of ticket agent. Carrier documented these observations and conclusions in support of its decision. No contrary evidence was furnished by Petitioner.

In disputes such as this, it has long been held that Carrier has the right to make judgments about the qualifications and abilities of applicants for positions. Such judgments may not be overturned by Boards such as this unless there is convincing evidence that the decision was arbitrary or capricious. In this dispute there is no evidence whatever to support the conclusion that Claimant had the requisite ability, in the face of Carrier's assertions to the contrary; and further, no evidence to indicate that Carrier's conclusions were arbitrary or capricious. The Claim must 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of July 1982.

