

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24024
Docket Number CL-23867

T. Page Sharp, 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-9332)
that:

1. The Company violated the terms of the Agreement between the Parties hereto at Waterloo, Iowa, when on February 19, 1979 (Washington's Birthday), a legal holiday, it combined the work of several positions and Claimant Clerk W. D. Smith was not allowed to work, in violation of Rule 34 (f), 2, among others, of the Clerks' Agreement.

2. Company shall now compensate Claimant for one (1) day's pay at the time and one-half rate of the combined positions, allowing the highest rate of pay of the positions involved.

OPINION OF BOARD: The Carrier combined the work of six positions to work on the Washington's Birthday Holiday. The work of the consolidated position was awarded to an employee, the Chief Clerk, who was junior in seniority to the Claimant. The Claimant was the incumbent on one of the positions which were consolidated.

The Claimant maintains that he was qualified to hold the consolidated position and that the Chief Clerk was not qualified on all of the positions which were consolidated, therefore not qualified for the holiday position.

The relevant rule from the labor agreement reads:

"(f) Assignment of Work on Holidays -

(1) When a holiday falls on a work day of a regularly assigned employee and his position is worked, and is not combined with other positions on the same shift, the regular employee is entitled to be used.

(2) When necessary work on two or more positions on the same shift is to be performed by one employee, it will be offered in seniority order to employees occupying the positions involved and the highest rate of pay allowed.

(3) When positions to be filled are vacant because of the regular occupant being permitted to lay off, or because there is no regularly assigned incumbent on the holiday, the opportunity to fill the vacant position will be offered to qualified regularly assigned employees on the same shift at the same location whose positions were pulled off or combined with others. If not filled in this manner, the work will be offered to qualified extra clerks who have not worked forty hours in the workweek; if on a regular relief assignment to the regular incumbent on the same shift who fills the position five days a week; thereafter to the senior available qualified regular clerks.

Note: The term 'shift' as used in this rule refers to positions with starting times between the hours as set forth in Rule 29 for positions covering twenty-four hour service, and positions which starting times within a spread of two hours where twenty-four hour service is not performed."

Although the Rule is unique, the usual elements of filling a vacant holiday position are present, the position will be offered to the senior qualified employee. An award on this same property affirmed the principle that the determination of qualifications for holding a position resides with the Carrier. Award 18353. See also Award 23044. Here the Carrier has made a determination that the Claimant did not have the qualifications to perform all of the duties of the six consolidated positions. This fact is disputed by the Claimant but the Board will accept the Carrier's judgment.

Claimant and his Organization further contend that the employee who was awarded this consolidated position was not qualified to hold that position. This position was raised in a letter of March 29, 1979, from the Local Chairman to the Agent of the Carrier and was also raised in the submission to the Board. This issue was not raised in the previous awards.

While adhering to the principle that the determination of qualification is for the Carrier unless such determination is arbitrary or capricious, the considerations are different when the issue of comparative qualifications (or lack thereof) are raised. The unsuccessful applicant for the position is capable of rebutting the Carrier's judgment that he is not qualified. He is in control of the evidence that he would present to prove his qualification. However, he would not usually be in a position to present substantial evidence of the lack of qualification of the successful applicant.

There was an attempt in this instance to prove the lack of qualifications of the Chief Clerk by utilizing the Carrier Call Book in which each employee placed his name under positions for which he was qualified. The name of the Chief Clerk does not appear under the various positions which were

consolidated into the one that worked the holiday. This statement was not rebutted, the Carrier standing on the defense that Claimant was not qualified to work the position.

When the point was raised that among unqualified employees a junior employee was allowed to work the position, the Carrier had a duty to come forth and establish the qualifications of the employee whom it allowed to work the position. This it did not do and on this basis the claim will be sustained in the amount of \$95.45 as claimed by the Organization on the property.

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

The Agreement was violated.

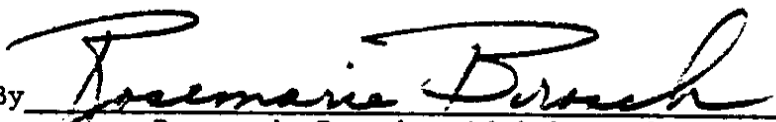
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Claim sustained in accordance with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November 1932.