

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24478
Docket Number CL-23855

Carlton R. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9334)
that:

1. Carrier violated the effective Clerks' Agreement when it refused to permit Mr. Bennie Lewis to demonstrate his fitness and ability on Position No. 547 (Valuation Accountant), but rather assigned the position to an employee junior in service to Claimant;

2. Carrier shall now compensate Mr. Lewis for eight (8) hours' pay at the pro rata rate of Position No. 547, commencing September 24, 1979, and continuing for each and every day thereafter that a like violation exists.

OPINION OF BOARD: This is a "fitness and ability" dispute in which the Claimant was denied a position to which he alleges his seniority entitled him.

The previous incumbent retired. In posting the position, among other things, the qualifications for the position included the following: "BS with a major in accounting or equivalent training and experience." The position was awarded to an employee junior to the Claimant who had a BS in accounting. The Claimant objects to the requirement of a BS Degree in accounting and alleges that he has sufficient fitness and ability to have been accepted for the position at least for the thirty days as provided in Rule 8.

The Carrier alleges that an employee must be qualified to perform the duties of the position at the time of his initial assignment and that the purpose of the qualification period is simply to enable the Carrier to correct an error of assuming that a man is qualified when, in fact, he is not.

A review of awards indicated that it has been consistently held that the term "fitness and ability" means that there is a reasonable probability that the employee would be able to perform all of the duties of the position within a reasonable time (Award 5348). This does not mean that prior performance is a necessity (Award 13850) but that the employee must have the potential (Award 14762). By the same token, an employee obviously lacking fitness does not have to be given qualifying time.

There is a presumption that the Carrier makes a reasonable determination of fitness and ability, but this may be rebutted by the Claimant who does not have to show beyond a reasonable doubt that he possesses the fitness and ability

required to perform the job (Award 10424). A Claimant may show that his job was in a direct job progression with the vacancy being sought (Award 11279), to overcome the rebuttable presumption that the Carrier was not arbitrary in making its determination.

In the instant matter, the first issue is the establishment of the qualifications by the Carrier of a BS Degree with a major in accounting or the equivalent experience. The incumbent did not have a degree in accounting.

Whether the establishment of this requirement that there be a degree in accounting, in this instance, will be viewed as it applies to the Claimant in order to determine whether it was arbitrary. If it could be established that the setting of this artificial standard was not justified because of the nature of the position or the standard could not be met by experience and training sufficient to perform the duties of the position, then it would be **arbitration**. While the Carrier has the right to enumerate the qualifications necessary for the performance of the position, it is not privileged to overstate the qualifications which are necessary to perform a particular function unless it is changing the nature of the position requiring additional qualifications, which would be accomplished separately from the posting of the position under the rules governing the determination of pay scales for the various positions covered by the **agreement**.

Thus, in spite of the specific language of the posting, if an applicant had sufficient fitness and ability to show that there was a reasonable probability that he could perform all the duties of the posted position, then it would be arbitrary to establish the college degree requirement or training and experience equivalent to the college degree requirement if, in fact, these qualifications went beyond the requirements of the position. Applying this principle to the Claimant, a review of the education level of the Claimant as well as the type of experience which he had in his other employments shows that first, however laudatory his continuing education program is, he did not have many accounting courses and had not done very well in some of them. A review of his history shows that he was not in the accounting department and was not in a direct job progression toward the type of employment which he sought which could have demonstrated the fitness and ability to perform these functions. The record shows that there was an interview of the Claimant and that he did not appear to understand rudimentary accounting terms and that, under the circumstances, it is not unreasonable that the Carrier representative who interviewed the Claimant determined that he did not have the fitness and the ability to perform the posted position.

For these reasons, we will deny this 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 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.

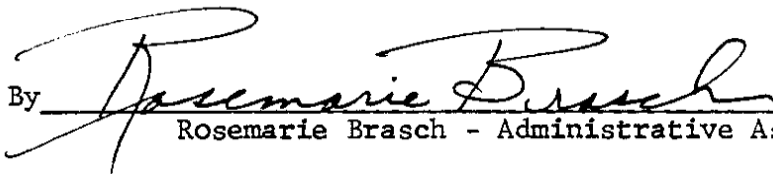
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1983.