

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24660
Docket Number CL-24860

Robert Silagi, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

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(New Orleans Public Belt Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9712)
that:

1. Carrier violated Rules 7, 9, 10, 15, 17, among others, when it worked a junior employe on the position of Clerk Typist, M.R.B. Accounts, Job Code 2610.

2. The Carrier shall now compensate the senior furloughed clerks - P. L. Pillot, M. C. Allmond (sic), J. Cheatham, and D. J. Leonard eight (8) hours pay, pro rata beginning March 11, 1982 through March 30, 1982.

OPINION OF BOARD: The issue in this case is whether the Carrier violated the agreement when it bypassed four senior claimants and utilized a junior employe, M. J. Dietrich, to fill a position. The undisputed facts are:

Carrier is a switching and terminal railroad operating in the New Orleans Metropolitan Area. The Mississippi River Bridge is maintained by the Carrier under contracts with Missouri Pacific and Southern Pacific Railroads for the repair and maintenance of the railroad section only. Carrier repairs and maintains the highway section of the bridge under a separate contract with the State of Louisiana. Each month bills must be prepared for each of the parties mentioned above. The Carrier is then reimbursed for its expenses which amount to more than \$100,000 monthly. The duties of Job Code No. 2610, Clerk Typist, Mississippi River Bridge, Accounts, are to distribute labor and material charges on various sections of the bridge, prepare sundry bills for damages to the bridge, order material, post time cards for payroll and post and balance a stock ledger.

R. C. Berger, the incumbent clerk on this position, went off sick on February 22, 1982. Claimant Allmand was temporarily assigned to this position from March 1st to March 9th when he was furloughed. Clerk Dumas, whose seniority exceeds that of any claimant, was then assigned to the position. Dumas informed his supervisor that the work was seriously behind schedule. Accordingly, Dietrich, who had previously held this position for one year, from July 1980 to July 1981, was recalled from furlough to assist Dumas in completing the necessary reports. Dietrich worked from March 11th to March 19th and then returned to furloughed status. Claimant Allmand assisted on this position on March 25 and then Clerk Petric, who also has more seniority than any claimant, assisted on March 29, 30 and 31, 1982.

The Carrier asserts that Dietrich was the only experienced furloughed clerk who could be recalled to assist on this assignment in completing various accounting statements so that Carrier might receive reimbursement for its expenditures. The Organization alleges that Carrier violated five rules by making this assignment. The basic rule involved in this dispute follows:

"Rule 7. Promotion, Assignment and Displacements

Promotion, assignments and displacements shall be based on seniority (the prime consideration), fitness and ability; fitness and ability (subject to Rule 15) being sufficient, seniority shall prevail.

Note: The word 'sufficient' is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability."

The Carrier notes that no vacancy existed. Moreover Carrier alleges that it did comply with Rule 7 by selecting that furloughed clerk who possessed the fitness and ability to assist on Job Code No. 2610. In support of its position the Carrier states that:

Pillot (whose seniority is first among the claimants) never worked Job Code No. 2160 and, furthermore, never requested assistance in learning the duties of said position.

Allmand (whose seniority is second among the claimants) temporarily worked this position during the first part of March 1982. However his supervisor was not satisfied with Allmand's performance.

Cheatham (whose seniority is third among the claimants) never worked this position at all. Cheatham is not a qualified clerk typist and has no bookkeeping or accounting background.

Leonard (whose seniority is fourth among the claimants) held this position from August through October 1981. During this period Clerk Berger, whose desk was adjacent to Leonard's, daily instructed Leonard on the duties of the job. During her 3 month tenure, the stock ledger was never posted or balanced. In her supervisor's opinion Leonard was not qualified on this position.

The Organization cites awards to the effect that a seniority provision in an agreement is a limitation on the Carrier's right to operate its business. (Award 19758 - Rubenstein) and that a Carrier has an obligation to make a reasonable effort to call the senior available employe before using a junior employe to do the work (Award 15640 - Ives).

The Organization argues that at the very least the position should have been assigned to Claimant Leonard since she had previously worked said position for three months and had greater seniority than Dietrich. The Organization claims that the mere opinion of the supervisor is not proof that Leonard lacked ability to perform the work.

We do not agree. Disputes involving an employee's qualifications are not new to this Board. "[T]he awards are legion that it is the Carrier's prerogative to determine the fitness and ability of an employee for a particular position". (Award 23886 Sickles). "[O]nce the fitness and ability of an employee have been found by the Carrier to be lacking, the burden rests upon the claimant to overcome that decision by substantial and competent proof". (Award 17141). See also Award 14040 - Dolnick. The determination of "fitness and ability" is, in the first instance, a prerogative of management. Only if proven by a preponderance of evidence that the judgment of management was arbitrary, unreasonable or exercised to circumvent the agreement, will we reverse management's decision. (Award 16546 - Dorsey). In the instant case there is no evidence that Carrier's decision was arbitrary, capricious, unreasonable or calculated to evade the Rules.

On the record before us the Organization failed to adduce evidence of probative value that any of the four senior Claimants herein had sufficient fitness and ability to perform the particular duties of the position at the time it was awarded to Dietrich. Nor does the Organization deny that Dietrich possessed these requisites. Since we deny the claim it is unnecessary to comment upon the compensation requested as a remedy to the alleged violation.

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 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.

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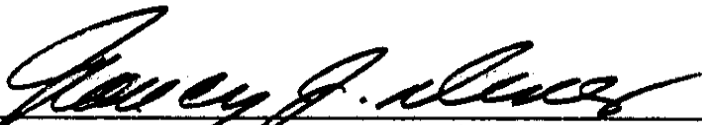
Page 4

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984

