

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24682
Docket Number CL-24578

Robert W. McAllister, Referee

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

PARTIES TO DISPUTE:

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(Chicago, Milwaukee, St. Paul and Pacific Railroad Co.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9580)
that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it charged, held investigation and assessed discipline of disqualification against Employee J. F. Rogers on November 7, 1980.

2) Carrier shall now be required to reinstate Employee J. F. Rogers to his former position and compensate him for all lost time due to his disqualification.

OPINION OF BOARD: J. F. Rogers, the Claimant, was the regularly assigned Joint Facility Clerk Position 10370 from July 1, 1980, until his disqualification effective with the close of business on November 7, 1980. The Claimant's seniority with the Carrier dates from February 26, 1956.

The Organization contends the Claimant's disqualification was based primarily on the fact he was not capable of performing the work with sufficient speed. A standard, the Organization asserts, that is unreasonable and subverts basic seniority rights.

Notwithstanding the Claimant's long service record, the investigation of the Carrier showed by a preponderance of proof that his job knowledge did not meet the requirements of Position 10370. The Claimant's testimony supports the Carrier's charges and, in fact, acknowledges his inability to perform his duties as required. In such cases, the Board has repeatedly held that, when the Carrier determines an employee lacks the requisite fitness and ability, the burden shifts to the employee to prove the impropriety of that assessment. Herein, the record before us does not sustain this burden, and we will not substitute our judgement for that of the Carrier's.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

