

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 25328
Docket No. CL-25280

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9790) that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed and/or refused to allow Employee Robert Williams to displace on Assistant Bureau Head Position Nos. 06620, 46970, 46960 or 46980 on March 17, 1982.

2) Carrier shall now be required to assign Employee Robert Williams to Assistant Bureau Head Position No. 06620, 46970, 46960 or 46980 and compensate him for an additional eight (8) hours at the pro rata rate of the position to which assigned, commencing March 18, 1982, and continuing each workday thereafter.

OPINION OF BOARD: The significant events leading to this dispute began on March 17, 1982, when the Claimant filed a displacement notice to the Carrier to assign him to any of four encumbered Assistant Bureau Head Positions. Following a denial of the displacement, an "unjust treatment" investigation was held, and the Carrier upheld its earlier decision. Accordingly, the matter before this Board essentially consists of a "fitness and ability" determination. The Board has consistently found such determinations to be vested with the Carrier, unless a showing is made as to abuse of its discretion.

Following the qualification decision of the Carrier, the burden shifted to the Claimant to establish Carrier's error by substantive evidence. The Board also notes that there is a distinction as to what is required in the way of experience and abilities when a "bump" is contemplated, as here, as opposed to the exercise of seniority rights for an existing vacancy.

The parties have provided various Awards dealing with their rights and obligations in these kinds of disputes. Recognizing the critical importance in matters such as here, the Awards and pertinent rules have been thoroughly reviewed by the Board before arriving at its Award.

While the Claimant's assertions as to his ability are not taken lightly, since the record shows that these claims are not without substance, nonetheless, he has not produced evidence of the weight required under the circumstances of this dispute to show that Carrier's actions were arbitrary or capricious. Therefore, we have no basis to set aside the Carrier's disposition.

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

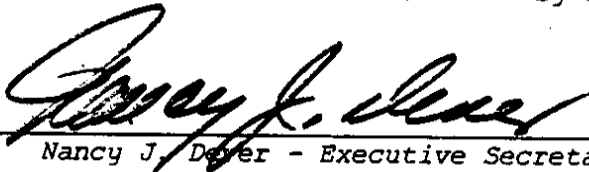
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.