

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25401
Docket Number CL-25444

Eugene T. Herbert, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9826) that:

1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it unjustly treated Employee Vivian Morch by not awarding her Train Clerk Position No. 04740 on August 24, 1982.

2) Carrier shall now be required to assign Employee Morch to Train Clerk Position No. 04740 and compensate her an additional eight (8) hours at the pro rata rate of Train Clerk Position No. 04740 for each workday she was held off such position.

OPINION OF BOARD: The Carrier awarded a Train Clerk position to an employee junior to Claimant. Although it appears that the position Claimant sought paid no more than the Relief Clerk position she then held, the Board accepts the proposition that Rule 7 of the Agreement between the Parties dealing with "Promotion" governs the outcome in this case. Rule 7 is as follows:

"RULE 7 - PROMOTION

"Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

"NOTE: The word 'Sufficient' is intended to more clearly establish the right of the senior employee to the new position or vacancy where two or more employees have adequate fitness and ability."

An unjust treatment hearing was conducted on the property on November 3, 1982, at which Mr. J. Playman, ATM-Administration for Carrier was questioned extensively on the basis for his decision to award the position to a person junior to Claimant. While Mr. Playman's responses appeared sometimes inconsistent as to the criteria he applied in awarding the position, the Transcript as a whole reveals that he selected the employee he regarded as having superior fitness and ability. It further appears that he regarded Claimant's fitness and ability as "not sufficient" because of her admitted need for further training, particularly with respect to "5 card demurrage".

Rule 7 is clear in its intent. If the fitness and ability of an employee is sufficient or adequate to accomplish the tasks of the position, he or she, if senior to other such applicants, must be awarded that position.

The need for additional on-the-job training of up to thirty days in duration does not denote inadequate or insufficient fitness or ability. That much is clear from Rule 8, which contemplates that such a training period may be necessary. Rule 8 states as follows:

***RULE 8 - TIME IN WHICH TO QUALIFY**

"(a) When an employee bids for and is assigned to a permanent vacancy or new position he will be allowed thirty (30) working days in which to qualify and will be given full cooperation of department heads and others in his efforts to do so. However, this will not prohibit an employee being removed prior to thirty (30) working days when manifestly incompetent. If an employee fails to qualify, he shall retain all seniority rights but cannot displace a regularly assigned employee. He will be considered furloughed as of date of disqualification and if he desires to protect his seniority rights he must comply with the provisions of Rule 12(b)."

"Fitness and ability" are terms which should be read in conjunction with the provisions of Rule 8. If an employee is likely to be able to qualify for, i.e., perform competently in, a position after no more than thirty working days of on-the-job training, he or she must, therefore, be regarded as having "sufficient" fitness and ability to be considered for promotion to that position.

While this Board will not lightly overrule a Carrier's good faith determination as to assessing the qualifications of its employees, it is manifest in this case that there was a misapplication of the criteria set forth in the Rules.

Claimant should have been accorded the opportunity to qualify for Train Clerk Position No. 04740. Accordingly, Carrier should now assign her to that position.

As a remedy, Claimant should fairly receive eight (8) hours at the pro rata rate of Train Clerk Position No. 04740 for each work day she was held off such position less the amount of compensation she actually received for those workdays.

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

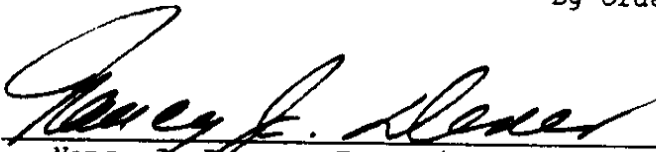
The Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Ever - Executive Secretary

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