

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25505  
Docket Number CL-25152

Robert W. McAllister, Referee

(Brotherhood of Railway, Airlines and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-9762)  
that:

(1) The Carrier violated the Agreement, when on January 12, 1982, it failed to assign Detroit Clerk Ms. P. J. Coffield to Console Operator assignment.

(2) Claimant Ms. P. J. Coffield shall now be paid the difference in the rate of her assignment and that of Console Operator for January 12, 1982, and each subsequent date or eight (8) hours straight time rate of Console Operator for each day in the event Claimant is furloughed.

OPINION OF BOARD: The Claimant, Clerk P. J. Coffield, is employed at the Carrier's General Office in Detroit, Michigan, with seniority from July 24, 1978. On January 11, 1982, the Claimant was displaced from her Claims Adjustor position by a senior employee. Thereafter, the Claimant submitted a request to exercise her seniority rights of displacement over a junior employee holding the position of Console Operator. The Claimant was advised that no employee without prior experience can qualify on that position within the thirty (30) working day period provided for in Rule 8 and denied her request for displacement. Claimant then requested an Unjust Treatment Hearing which was held on January 22, 1982. Claimant was, thereafter, not awarded the sought after assignment.

The Carrier's position was that the Claimant's contractual rights were not violated in that her past positions and experience furnished no evidence of sufficient fitness and ability to qualify for the position within thirty (30) working days. Having determined that employees without some prior on-the-job experience as a Console Operator cannot qualify within the thirty (30) working days, the Carrier's Data Services Department adopted the following policy:

"An employee with no prior Console Operator schooling or on-the-job experience cannot displace a qualified Console Operator.

In selecting the successful applicant for bulletined Console Operator positions, the following procedures would be followed:

- (a) The position to be awarded to the senior applicant possessing prior Console Operator schooling or on-the-job experience.

- (b) In the event no applications are received from employees possessing prior Console Operator schooling or on-the-job experience, all unqualified applicants will be offered an I.B.M. Company aptitude test (a logic and business math test) and the senior applicant passing the test to be awarded the position and allowed an extended qualifying period in which to qualify."

This Board finds the above, unilateral adoption of policy to be in direct conflict with the applicable language of Rule 5. That rule does not distinguish among promotion, assignments, and displacements. It clearly and unambiguously applies the sufficient ability test to all three subjects. It most certainly does not envision a different and more stringent standard to apply to displacement versus promotion or assignment. Having determined that the provisions of Rule 8, Time in Which to Qualify, is impractical for the Console Operator's position, we find the Carrier may adopt a more liberal and reasonable period of time for qualification. However, Rule 8 deals with time for qualification not the initial exercise of seniority. Secondly, Rule 8 reinforces the application of Rule 5 and, in describing employees who are allowed time to qualify, does not distinguish between bulletined positions or displacement rights. Accordingly, we find the Carrier's policy concerning Console Operators to be an arbitrary and capricious exercise of management rights. Once determining that experience dictated that Console Operators could not practicably qualify within thirty (30) working days, the Carrier improperly distinguished between employees exercising seniority for displacement versus those employees in line for promotion or assignment. Accordingly, we will sustain 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 Employee 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

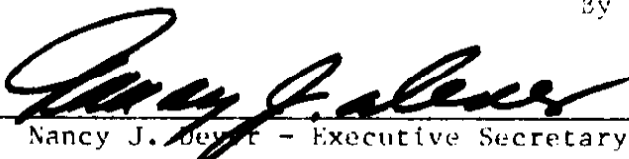
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1985