

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25642
Docket Number CL-25746

Stanley L. Aiges, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
PARTIES TO DISPUTE: (
(Atchison Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9883)
that:

(a) Carrier violated the current Clerks' Agreement at Dallas, Texas, on January 22, 1983, when it failed and/or refused to allow written displacement rights on Swing No. 6, Dallas, Texas, and

(b) Mr. G. C. Steinberg shall now be paid 8 hours time and one-half rate of Swing Clerk Position No. 6 per day, plus all subsequent wage increases for each 8 hour shift on the position involved beginning January 22, 1983, and continuing each day thereafter until violation is terminated, and

(c) Mr. Steinberg shall also be paid 12% per annum until claim is paid.

OPINION OF BOARD: Claimant G. C. Steinberg occupied Swing Position No. 7 at Dallas, Texas. That position called for five days of work as a Train Order Printer Clerk ("TOPC"). He was displaced from Swing Position No. 7 on January 18, 1983. He sought to exercise his seniority to displace a junior Employee on Swing Position No. 6. That position calls for two days' work as Head Rate/Bill Clerk, two days' work as a Car Clerk, and one day's work as a TOPC/Towerman. The Carrier denied his request. Steinberg then exercised his displacement rights on Swing Position No. 2.

Steinberg was displaced from Swing Position No. 2 on January 31, 1983. He again sought to displace on Swing Position No. 6. The Carrier denied that request as well, citing his lack of sufficient fitness and ability. That action led to the instant claim.

Steinberg's displacement request was denied on narrow grounds. Simply stated, the Carrier relied upon the fact Steinberg had never before worked as a Towerman. Nor had he passed a written examination and job test for that assignment, which Carrier maintains is a necessity for all Employees working the Towerman position.

This Board has frequently affirmed the principle that a Carrier's determination as to an Employee's fitness and ability will not be overturned unless it can be established that its judgment was arbitrary, capricious or unreasonable. (See Award Nos. 22892, 21328, 20875, 20631, 17612, 17489)
We cannot conclude that the Carrier's decision in this case was arbitrary, capricious or unreasonable.

Towermen have a heavy responsibility. They are responsible for trains and/or switching at several crossings. The job is a difficult one. The potential for danger, damage and loss of lives is real. For that reason, the Carrier has long required Employees without prior experience (1) to train with a qualified Towerman, (2) to pass a written test given by the Signal Supervisor, and (3) to pass an on-site operation test. Until an Employee satisfies these requirements, he simply is not considered to have the necessary fitness and ability to perform a Towerman job. There is nothing unreasonable about this. On the contrary, it makes good sense. We see no reason at all for the Carrier to have departed from what appears to be a well-established practice. It is, in fact, a practice to which the Organization has not taken exception prior to this case.

Moreover, we see no reason to depart from the reasoning recently expressed by the Division in a parallel case involving the same Parties and Agreement. (Award No. 25112) In denying a claim that Clerk Johnson should have been allowed to fill a Swing job which also entailed one day of work as a Towerman, the Division affirmed the existence of the past practice relied upon by the Carrier here. The Division also noted that the Board was "...of the view that experience is relevant to the requirement of Swing Job No. 6 and would demonstrate an employee's ability to perform the job". A trial or break-in period, the Division added, is not required under the Agreement. Award No. 25112 must be deemed controlling here. See, for example, Third Division Award Nos. 25103, 25141, 22287, 21923, 22017, 22147, 22155 and 22767.

For these reasons we must deny the 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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1985 .

