

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25871
Docket Number CL-25876

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9903)
that:

(1) Carrier violated the Clerical Rules Agreement effective September 1, 1946, particularly Rule 1 - Scope, which was amended November 1, 1980.

(2) Carrier has assigned Mrs. N. L. Zemencik, who was on the Marketing and Sales Department seniority Roster No. 15, to Stenographer-Clerk, a 'P'v position in the Manager of Industrial Engineering Office at Pittsburgh, PA, which is in Seniority District No. 3. Clerk, Ms. P. A. Carcaise, who is on Seniority District No. 3, had applied for this position and was denied same, is a qualified stenographer and is senior to Mrs. Zemencik on Roster No. 3. Mrs. N. L. Zemencik did not have any seniority on Roster No. 3.

(3) Stenographer-Clerk, Mrs. P. A. Carcaise be compensated one (1) penalty day's pay for July 6, 1981, and each subsequent day thereafter until this violation is corrected by placing Ms. Carcaise on this position. (PLE 14-81)"

OPINION OF BOARD: On July 6, 1981, Carrier assigned a Stenographer-Clerk position in the office of the Manager of Industrial Engineering at Pittsburgh, Pennsylvania, to N.L. Zemencik. The position was a "P" (partially exempt) designated assignment covered by all the Rules of the Clerks' Agreement, with the exception of Rules 4, 8, 10, and 14.

A Claim was instituted on behalf of Claimant, who maintained that she held seniority on Seniority District 3, while the successful applicant did not. The Organization alleged a violation of the Clerical Rules Agreement, effective September 1, 1946, specifically Rule 1 (Scope). That Rule reads in pertinent part as follows:

"RULE 1 - SCOPE

(d) EXCEPTIONS:

2. All positions herein designated as 'P' (partially exempt) will be subject to all the Rules of the Agreement except Rules 4 - Promotion, Assignments and Displacements; 8 - Bulletins; 10 - Temporary Appointments; and 14 - Reducing Forces.

NOTE: All positions designated herein as 'P' will be filled by proper officer, provided the senior qualified employees in the particular office, or seniority district where vacancies occur will be given prior consideration for such vacancies. The Union Shop Agreement dated August 14, 1951, as amended effective January 1, 1953, shall apply to employees while occupying 'P' position."

The Organization contends that the question of Claimant's fitness and ability is not at issue in this case. Claimant, by Carrier's own admission, was a qualified stenographer and, consequently, all things being equal, seniority must be given greater weight. The duties of the position in dispute were routine in nature. By deciding to bypass the senior, qualified employee, Carrier abused its discretion.

Carrier maintains that the assignment of an employee not previously on Seniority District No. 3 was not in violation of any provision of the Agreement. It believed that Claimant lacked the necessary qualifications and sufficient fitness and ability. While Claimant had four and one-half months of seniority on Seniority District No. 3, that constituted her entire company service. Mrs. Zemencik, on the other hand, had 11 and one-half years of service with the company. Rule 1 requires only that senior qualified employees in a seniority district be given prior consideration. That was done. Experience, however, is an important criterion in filling exempt and partially exempt position.

In reviewing the record of this case, we find the decision of Referee Sickles in Third Division Award No. 23249 to be particularly on point. He stated that "the determination of fitness and ability is a managerial prerogative which will be sustained unless its action is shown to have been arbitrary or capricious." The Organization acknowledged in its submission that usually Carrier will base its decision on various aspects of fitness and ability or other qualifications, such as knowledge of a position. Carrier determined that Claimant did not have a sufficient background and understanding of the company to handle the administrative and research functions vital to the position with a normal amount of training. We cannot conclude that that determination was arbitrary or capricious.

As Referee Sickles pointed out, "While extended experience cannot be the only factor in determining fitness, it can be a significant factor when the nature of a position is taken into consideration."

At the same time, given the specification of the Rule in question, we also find Third Division Award No. 16480 to be on point, wherein Referee Dorsey noted that "the current possession of fitness and ability is an indispensable requisite that must be met before seniority rights become dominant...." In the final analysis, we conclude that there is no showing that Carrier failed to give prior consideration to Claimant and no indication that Carrier abused its discretion in first considering her fitness and ability to fill the vacancy.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

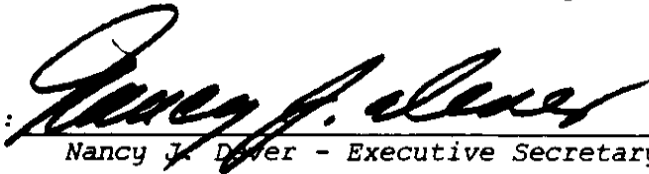
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.