

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26086
Docket Number CL-25921

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9908) that:

(a) The Carrier violated Rule 4, 9, 10, 18 and others of the Clerks' Agreement on May 20, 1981 when Evelyn M. Stokes was not allowed to displace Position A-11, Pricing Analyst, rate \$88.33 per day, and was not even given a chance to demonstrate that she had the fitness and ability and was not given a test as requested by her and Bob Powers, representing BRAC.

(b) I request that Evelyn M. Stokes be given a fair test to demonstrate that she has the fitness and ability to perform the duties of Position A-11.

(c) Evelyn M. Stokes should receive the difference in pay for Position A-11, rate \$88.33 per day, and the Position A-27, OS&D Clerk, rate \$85.92 per day, or her guarantee which is \$86.83 per day, for May 20, 1981 and every day since May 20, 1981 until she is allowed to displace to Position A-11 or this claim is paid."

OPINION OF BOARD: The Claimant was denied displacement rights to a position of A-11, Pricing Analyst, on the grounds that she lacked the requisite fitness and ability to fill the job.

The Organization contends that Agreement Rules, 4, 9, 10, 18 and others were violated when Carrier refused to permit her to displace a junior employe and give her the opportunity to demonstrate her fitness and ability in a fair test.

Carrier contends its determination that Claimant was not qualified for the position and that she could not qualify for the position is its prerogative under the provisions of Rule 4. Carrier maintains it is not obligated under the parameters of the Agreement to give Claimant an opportunity to qualify for the position in dispute when she does not possess minimum fitness and ability to perform the displaced function.

Essentially, the dispute involves Rule 4, which states:

"Rule 4-Promotion Assignments and Displacements

(a) Employees covered by this Agreement shall be in line for promotion. Promotion, assignments and the exercising of displacement rights shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: (1) the word sufficient is intended to more clearly establish the right of the senior employee to a new position or vacancy where two or more employees have adequate fitness and ability.

(2) Fitness and ability does not mean that the applicant is immediately qualified to assume the duties of the position without guidance and assistance. It simply means that the applicant must possess the minimum skills so as to raise a reasonable probability that he or she will be able to perform the duties of the position within a reasonable time.

(b) In the event an applicant's fitness and ability are in question, the applicant will, upon written request, be given a fair test, if applicable, or otherwise permitted to demonstrate fitness and ability for the position. The employee is entitled, upon request, to have a duly accredited representative present during the test or demonstration and the employee and/or the representative will be permitted to review the results thereof."

The issue before the Board is not new to the parties. In prior Awards cited below, the Board has held that fitness and ability does not mean that an employee fully and completely perform work immediately upon assuming a position, nor does it mean an Employee who obviously lacks the minimum skills be given time to demonstrate qualifications when it is apparent Claimant could not qualify within a reasonable time.

The Organization asserts that Rules 9 and 10 also support its position. The Organization contends that an employee can request that he or she be allowed to demonstrate fitness and ability through testing or on the job demonstration. Rule 9 - Period Allowed In Which to Qualify, provides in pertinent part:

"(e) Employees exercising displacement rights will be allowed thirty (30) working days in which to qualify except when it is plainly seen within less than thirty (30) working days that they cannot qualify, they may be removed from the position by mutual agreement between the Management and the Clerks Local Committee. Employees disqualified will exercise displacement rights as provided in Rule 18 (b) from date disqualified.

(f) Employees will be given full cooperation of department heads and others in their efforts to qualify.

(g) Applicants should be satisfied that they can qualify before making applications for positions."

Carrier contends that Rule 9 permits an employee to assume a position contingent on minimum fitness and ability.

The Organization argues that Rule 10 provides the means for Carrier to train Employees for positions for which they are not qualified. Rule 10-Training, provides in pertinent part:

"(a) 1. Any employee entitled to or displacement on a bulletined position who, in the judgment of his immediate supervisor, is not qualified for the position may be required to train thereon before being permitted to take over the assignment. Such training will be for a reasonable length of time, but not to exceed eight (8) weeks or other established training periods. The employees required to train will be allowed compensation at the rate of the position on which seniority has been exercised during the training period. Training will be limited to regular working hours of the position on which training is required.

2. When the incumbent of a clerical position requires additional training as a result of a change in procedures or the installation of new machines, employees will be allowed up to twenty (20) hours training thereon. The incumbent shall be compensated at the pro rata rate of the position to which assigned for time consumed in such training."

3. In the event employees fail to demonstrate reasonable progress toward qualifying during training as provided for in Section (a) above, they will be allowed to return to former position, provided a senior employee has not displaced thereon, in which case they will be allowed to exercise seniority as provided in Rule 18(b)."

Carrier argues that Rule 10 only applies to employees who it determines have minimum fitness and ability to qualify for a position.

In the instant case, Claimant obtained displacement rights on May 19, 1981 and she conferred with a Carrier Officer and her Representative on the same date to discuss the position sought.

Although Claimant has 11 years of considerable clerical experience, Carrier informed Claimant and her Representative that a Pricing Analyst position requires 6 months to 1 year on the job experience in order to perform basic job functions.

The record shows that the Organization did not take exception to Carrier's determination that work rate experience is normally acquired in the less difficult position of Assistant Pricing Analyst which Carrier considers necessary to advance to the higher skilled Pricing Analysis position.

Carrier declined Claimant's request in conference and confirmed same in writing on same date. The Organization did not present any evidence at any time to indicate minimum fitness and ability of Claimant to enable her to displace on the position.

Third Division Award No. 23047, which is conceptually on point with this dispute held in pertinent part, after discussing the importance of prerequisite prior experience and relevant skill, that:

"This Board certainly does not have the qualifications to determine what technically constitutes 'sufficient fitness and ability' for a particular employment position. This is singularly a Carrier prerogative. (See Third Division Awards - 21385, 21119, 18802, 17141 and 16309). But we have the judicial authority to decide whether an employer was arbitrary in the exercise of this judgment. In many of our decisions on seniority and qualifications issues we have held that it was incumbent upon the Petitioner to demonstrate that he possessed 'sufficient fitness and ability' for a contested position."

The Board finds this ruling applicable here. Several Awards cited above clearly recognize the right of the Carrier to make determination as to qualification. In the Board's Opinion, Carrier properly exercised its managerial judgment in denying Claimant's displacement.

After a careful review of the record, the Board finds nothing to show that Claimant ever complied with the clear and specific language of Rule 4(b) which states that, "In the event an applicant's fitness and ability are in question, the applicant will, upon written request, be given a fair test. . ."

The Board is not persuaded that the Organization's claim, dated June 2, 1981, which included a request for a fair test on behalf of Claimant, is consistent with the meaning and intent of Rule 4(b).

Absent a showing of minimum skills to qualify within the time established by Rule 9, or any evidence that Carrier acted arbitrarily or capriciously, the Organization has failed to carry its burden of proof that the Agreement was violated. The Board accordingly finds that the instant Claims are without merit.

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

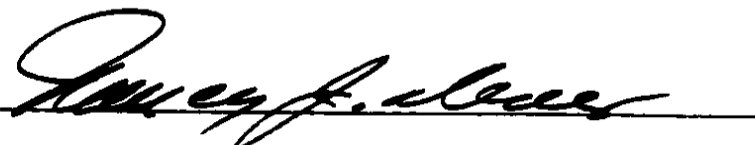
That the Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1986.