

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26090
Docket Number CL-25394

M. David Vaughn, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9815) that:

1) Carrier violated the Clerks' Rules Agreement at St. Paul, Minnesota when it unjustly treated Employee T. O. Meixner by not awarding him Assistant Chief Clerk Position No. 14030 on September 28, 1982.

2) Carrier shall now be required to assign Employee T. O. Meixner to Assistant Chief Clerk Position No. 14030 and to compensate him for all lost earnings caused by Carrier's failure to assign to such position."

OPINION OF BOARD: Claimant was passed over for a bulletined position of Assistant Chief Clerk at the Carrier's Twin Cities Terminal facility at St. Paul, Minnesota, in favor of an employee with less seniority. He claimed sufficient skill and ability to perform the duties of the position and asserted that the Carrier's failure to award him the position constituted unjust treatment.

Rule 7 of the applicable Agreement between the Carrier and the Organization provides, in part, that,

"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."

Rule 8 (Time in which to Qualify) provides, in part, that,

"(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 from being removed prior to thirty (30) working days when manifestly incompetent. * * *

In the Unjust Treatment Hearing accorded Claimant, the uncontroverted evidence was that the position at issue required "knowledge of train blocking, System 3 operation, some keypunching, and all-around knowledge of the PICL system, . . . the hump, car disposition, . . . [and a familiarization (with) the office (and every position in it) because . . . the position is called upon to direct some of the other (employees)]."

The evidence at the Hearing indicated that the Carrier had reviewed Claimant's record and had found him lacking, at that time, in fitness and ability for the position. It conceded that Claimant had performed competently in a position related to that for which he bid. However, Carrier witnesses testified without contradiction that Claimant had no knowledge of or prior experience in the Carrier's Twin Cities Terminal facilities. The Carrier asserted that prior knowledge of the particular office, the duties of the positions in it, and the operation of the facility at which the position would be located were necessary to perform the duties of the position. It also asserted that Claimant lacked keypunching ability, based on his failure to pass prior testing. Carrier witnesses asserted their belief that Claimant "probably" could not have become competent to perform the duties of the position within thirty (30) working days.

The Claimant testified that he had 13 years of seniority, had worked every job in Minneapolis (although not St. Paul), and was competent. Claimant made no assertion of ability to perform all of the duties of the position at issue and introduced no evidence of his ability to do so. He contested the results of the keypunching test which the Carrier asserts he failed and alleged that the Carrier was discriminating against him, a charge then pending in another forum.

The Organization argues that Rule 7 requires that a senior employee possessed of minimum fitness and ability to perform the duties of a position be given, in accordance with Rule 8 of the Agreement, an opportunity to qualify for it within thirty (30) working days. The Organization asserts that the Carrier used Claimant's lack of "knowledge" and "experience" as a way to avoid training Claimant and taking a chance that he might succeed.

The Carrier asserts that the Claim is procedurally defective because the Organization did not specifically cite two of the Rules on which it relies. The Carrier argues that the Organization has not satisfied its burden to demonstrate unjust treatment, in that Claimant did not demonstrate his qualifications for the position. Further, the Carrier argues that it has the right to make determinations of fitness and ability, absent a clear and arbitrary abuse of discretion. It argues further that the Carrier properly assigned weight to prior experience in or related to the position at issue. Finally, the Carrier asserts that it cannot be required to train employees to perform a position for which they bid, absent a contractual obligation to do so.

Contractual language basing promotion on "seniority, fitness, and ability" requires that an employee be possessed of fitness and ability to perform the duties of the position at issue before seniority may be invoked. See, e.g., Third Division Award 24268. The Agreement does not allow the Carrier to choose an applicant based on better fitness and ability if an applicant is possessed of "sufficient" or "adequate" fitness and ability and is senior. See, e.g., Third Division Award 23047 involving the same language and parties.

The level of fitness and ability necessary to satisfy the requirements of sufficiency or adequacy is not defined. Clearly, it means something less than immediate ability to perform all the duties of the position; Rule 7 must be read together with Rule 8(a) so as to give meaning to the latter. However, the requirement of fitness and ability also means something more than the mere potential ability to do the job. The applicant must be at least minimally fit and able with respect to the duties of the position at the time he or she bids for the position.

Determinations of the duties of and requirements for a particular position and the fitness and ability of a particular applicant to perform the duties are the prerogative of the Carrier. The Board will not overturn such determinations, absent arbitrariness in the Carrier's exercise of its rights. It is the Claimant's burden to demonstrate fitness and ability to perform the duties of the position. See, e.g., Third Division Awards 21615 and 23047, supra.

The Board concludes, in light of the principles set forth above, that the evidence introduced by and on behalf of Claimant is not sufficient to establish Claimant's fitness and ability with respect to the duties of the position here at issue.

Nowhere in the record is there evidence that Claimant was fit and able with respect to the duties of the position. A general assertion of competence in another position is not sufficient without a showing that the duties of that position rendered Claimant fit and able with respect to the position at issue. Nor is there any assertion or evidence that the Carrier's description of the requirements of the position were inaccurate. Claimant's assertion of competence in keypunching is not supported by any evidence in this record; and his Claim, if any, with respect to the validity of his prior test is not before the Board. Claimant's allegation of discrimination in connection with that test was pending in another forum at the time of the Unjust Treatment Hearing; in any event, no evidence of discrimination was presented at the Hearing or elsewhere in the record.

The Carrier's selecting official asserted that the Carrier was possessed of the right "to appoint the most capable employee based on qualifications and knowledge." That is not the contractual test. That official further asserted that a reason for Claimant's non-selection was that he lacked "experience and knowledge required." Clearly, "fitness and ability" are not coextensive with "knowledge and experience."

A Claimant may possess fitness and ability to perform the duties of a position without having experience in and knowledge of the position itself. However, ability to perform particular duties of a position may be acquired through experience, and knowledge of the operations for which a position is responsible is a criterion which the Carrier may objectively consider in determining whether an employee is fit and able to fill a particular position. See, e.g., Third Division Award 23047, supra.

The evidence indicates that the Carrier looked at Claimant's fitness and ability for the position in light of the foregoing considerations and found it inadequate. There is no indication that the Carrier acted arbitrarily in making that determination. Further, the Organization failed to meet its burden affirmatively to demonstrate that Claimant was possessed of fitness and ability to perform the duties of the position at issue so as to be able to exercise his seniority. Accordingly, the Claim must be denied.

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

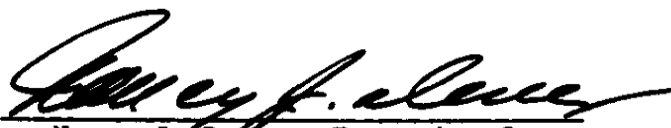
That the Agreement was not violated.

A W A R D

Claim 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.