

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26371
Docket Number MS-26226

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (J. H. Johnson
(
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM: "Claim of J. H. Johnson that:

(a) Carrier violated and continues to violate the rule of the current Clerks' Agreement at Los Angeles, California, commencing on June 24, 1983, when D. V. Boyer was assigned to Stenographic Position No. 6007, and

(b) Mr. J. H. Johnson shall be assigned to Stenographer Position No. 6007 and shall be compensated for eight (8) hours' pay each work day of Stenographer Position No. 6007 at the rate of \$96.51 per day, in addition to any other compensation he may have received commencing June 24, 1983, including interest payable at the prevailing prime rate, covering such loss and continuing so long as he is wrongfully deprived of his right to work Position No. 6007."

OPINION OF BOARD: This Claim must be considered in conjunction with Third Division Award No. 26370, which concerns the same Claimant and is incorporated here by reference.

Shortly after being disqualified for Position No. 6153 (as reviewed in the above cited Award), the Claimant bid on a posted position of Stenographer, Position No. 6007. The position was awarded to an employee junior to the Claimant, and the Claimant contends that his seniority should have been honored to permit him to gain the position.

The Board does not concur with the Carrier's view that, once the Claimant was disqualified from a previous stenographer position, he must be considered permanently disqualified for any similar position. In this instance, however, the Carrier reasonably determined that -- within a period of one month -- the Claimant had done nothing to improve his skill and ability to equip him to be qualified. The Claimant brought forth nothing to indicate to the contrary.

The Carrier acted within its authority under Rule 9 to determine in this instance that the Claimant did not have "sufficient fitness and ability", to be considered for Position No. 6007.

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

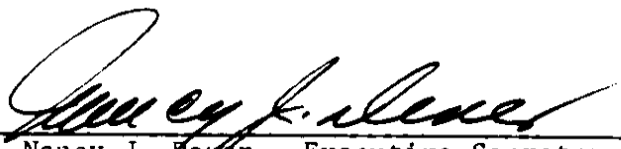
That the Agreement was not violated.

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 25th day of June 1987.