

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26379
Docket Number CL-26170

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9957) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily and capriciously refused to accept the displacement of Clerk Linda Almendarez to the position of Material Handler No. 706.

2. Carrier shall now be required to compensate Claimant Almendarez for eight (8) hours pay at the rate applicable to the position of Material Handler beginning November 8, 1982, and ending February 19, 1984, at which time she was allowed to work Material Handler positions."

OPINION OF BOARD: This is a fitness and ability dispute that arose after the Claimant requested to displace onto a Material Handler job. The Carrier did not allow the displacement of a junior employee because the Claimant failed to satisfy the minimum physical standards for the position as outlined in the Carrier's P & M Procedures Manual 25.6.

In light of the long line of Awards of this Division, it has been decided that fitness and ability determinations rest with the Carrier, unless a showing is made that the determination was arbitrary or capricious. Turning to the Claim, the evidence shows that the lifting requirements test, at issue herein, has been used by the Carrier a number of years. The Carrier contends that it is reasonable and that it is representative of the nature of work material handlers at times are required to do in the course of performing their duties. While there was testimony adduced at the hearing that raises a reasonable question concerning the need to lift objects weighing 50 pounds or more (rather than using a machine), the Board has no substantive basis to question the relevancy of this requirement.

The Claimant was a person of small stature and light weight, giving cause for reasonable questions as to her ability to lift and carry heavy materials. While the Board is aware that the Claimant did pass the test later on, at the time that the determination was made for the proposed displacement, she, by her own testimony, clearly acknowledged that she was not able to lift and carry the required object a distance of 30 feet.

In addition, we find no evidence that the Claimant was singled out for disparate treatment. Accordingly, the Claim is 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 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

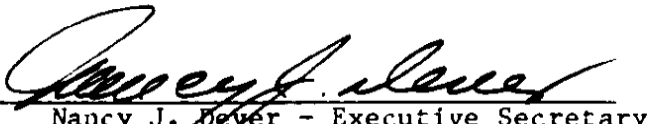
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.