

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of Brotherhood  
(GL-10019) that:

1. Carrier violated the Agreement when it refused to permit employe Linda C. DiLeonardi to displace to Position No. C-866 which was held by a junior employe.

2. Carrier shall, beginning April 6, 1984 and continuing until she is placed on Position C-866, compensate Claimant DiLeonardi the difference in the rate of pay of Position C-866 and the rates of pay received; compensate her for all overtime lost and pay her at the time and one-half rate for all hours worked outside the assigned hours of Position No. C-866 including difference rest days."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The chronology of events leading to this grievance are set forth as follows:

On February 3, 1984, Claimant was displaced from her position of PICL Clerk, Position No. C-871 by a senior employee. Pursuant to applicable Agreement procedures she gave written notice to the appropriate Carrier Officer on April 3, 1984, that she was displacing a junior employee from Position No. C-866, Relief Assistant Chief Clerk, effective April 6, 1984. Her Supervisor called her on April 4, 1984, and advised that she should not displace this position because she lacked knowledge about the Baltimore Terminal Service

Center (BTSC) operations and also ostensibly because she took off too much time. With respect to qualifications, Carrier further maintained that she did not possess the necessary fitness and ability to supervise the clerical personnel and lacked initiative and leadership skills.

In defense of the petition Claimant contends that she was fully qualified for the position, since she had previously worked four (4) of the five (5) positions that were under the supervisory aegis of the Assistant Chief Clerk. Moreover she notes that the Manager - BTSC never questioned the other four (4) Assistant Chief Clerks about their knowledge of the system. She further asserts that she had held a Lead Class Clerk position at BTSC and had three (3) class clerks under her supervisory authority. In this connection, she maintains she did a "very excellent job" in the aforesaid position since her judgment, ability and knowledge and work habits were "never doubted."

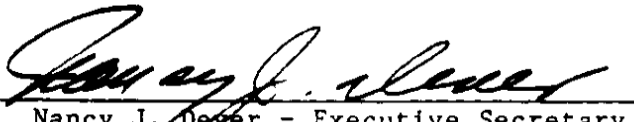
In rebuttal Carrier argues that the incumbent of the position must not only supervise the operations of the BTSC, but must also supervise other clerical personnel and be familiar with train operations and all related yard and agency functions. It observes that a thorough evaluation of her leadership and supervisory abilities and experience indicates that she was not a self starter and lacked the requisite leadership abilities needed for the position. It cited several Third Division Awards to support its position that it properly exercised its managerial responsibilities. See Third Division Awards 20878, 21615, 22029, 22462, 22892. See also, Award No. 4 of Public Law Board No. 114 involving the same institutional parties.

In considering this case, the Board concurs with Carrier's position. We have carefully reviewed the parties observable interpersonal relationships, and analyzed their positional arguments within the context of Rule 30 and the Board's prior decision on this type of issue. Accordingly, predicated upon this assessment we find no direct or persuasive inferential evidence that Carrier abused its managerial discretion or acted in a calculated manner that was clearly prejudicial to Claimant's interests. As we noted in Third Division Award 22892, a similar rule (Rule 30) was not meant to be construed as a strict seniority rule, rather seniority was qualified by the measured application of fitness and ability standards. Since we are in no position to preempt Carrier's management judgment, specifically as it relates to fitness and ability assessment, we must defer to Carrier's decision on this point. Based on the record, we are persuaded that Carrier acted in accordance with the intended application of Rule 30 and was free of any discriminatory animus. Additionally, we do not find convincing evidence that Claimant possessed the leadership skills to fill the position.

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 April 1988.

LABOR MEMBER'S DISSENT TO  
AWARD NO. 27036, DOCKET CL-26635  
(REFEREE ROUNKIS)

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The Majority Opinion has erred in its decision to deny.

On page two, in the first full paragraph, the Opinion correctly outlines the facts of the case, which we emphasize were not refuted. Having not been refuted, they should have led to a sustaining opinion.

Claimant clearly had the requisite fitness and ability for Position No. C-866, Relief Assistant Chief Clerk, and should have been allowed to displace.

Award No. 27036 is palpably in error and carries no precedential weight.

  
William R. Miller, Labor Member

April 29, 1988  
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Date