

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Trans-Continental Freight Bureau, Weighing and Inspection
(Department, South Pacific Coast Territory

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10100) that:

(a) The Bureau violated the provisions of the current Agreement at San Francisco, California, on February 22, 1985, when it denied the right of displacement by Beatrice Wahlbeck onto Position No. 68 - Transit Clerk/Stenographer, and

(b) Beatrice Wahlbeck shall now be compensated for eight (8) hours' pay at the rate of Position No. 68 - Transit Clerk/Stenographer for each work day beginning February 22, 1985, and continuing until she is placed upon this position."

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 basic facts are not disputed. The Claimant's regular position was abolished and on February 22, 1985, she attempted to exercise her seniority rights and displace the occupant on Position No. 68, Transit Clerk/Stenographer. On the same day, her request was denied in relevant part as follows:

"Returning your notice of exercise your seniority over Mr. Bell, Position No. 4 - Head Clerk, Rate, Weight and Description. Am unable to accept this notice as Position No. 4 is up for bid. If it is your desire to have that position, please

place a bid on my desk this evening. When I read this notice I attempted to catch you before you left the office in order to inform you of this, but you had already left.

Regarding your second choice of Position No. 68 - Transit Clerk/Stenographer, as computer communications is part of the job description, this is not available to you, because of your past performance."

This was a reference to the fact that in 1984 the Claimant was assigned to a payroll and utility position which required data inputting but the work had to be removed from her due to unsatisfactory performance. It is also undisputed that Position No. 68 involved computer work.

Subsequent to February 22, 1985, a claim was filed protesting the Carrier's decision not to allow the Claimant to displace the junior occupant of Position No. 68. The Claim was denied. During the conference held on December 16, 1985, the Carrier agreed to allow Claimant Wahlbeck's displacement onto Position No. 68 with the understanding that the data entry work would be removed from that position and with the understanding of the Organization's rights to progress its claim for adjudication of the monetary portion of the claim. Claimant accepted this offer and displaced onto Position No. 68 on January 20, 1986. Thus, the claim is limited to backpay.

The merits of this claim involve the application of Rule 7 which is quoted as follows:

"(a) Employees with sufficient fitness and ability will, when bidding on bulletined positions, exercising displacement rights and/or when recalled for a new position or bulletined vacancy, be allowed thirty (30) working days in which to qualify, and failing, shall retain all their seniority rights and may bid on any bulletined position but may not displace any other employe."

The Board has faced similar facts under similar, if not identical, rules. The Carrier is reserved the right to judge an employee's fitness and ability in displacements. When the Carrier makes such a determination and there is no evidence that such a determination was arbitrary or capricious, the burden shifts to the employee to establish the Carrier's determination was in error.

In this case, the record fails to bear out that the Organization has sustained this burden. In fact, not only is there the matter of computer work being removed from Claimant's position less than 12 months earlier, there is a tacit admission she wasn't qualified since, in effect, an opportunity to train was requested.

In view of the foregoing, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deber - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.