

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10169) that:

1. Carrier violated the intent and provisions of the current Clerks' Agreement at Pueblo, Colorado, on February 18, 1986, when it refused to allow J. A. Braxton to displace on Zoned Extra Board Position No. 6417 at Las Vegas, New Mexico, and

2. J. A. Braxton shall now be placed on Zoned Extra Board Position No. 6417 and shall be compensated eight (8) hours' pay at the pro rata rate of Position No. 6417 for each day Position No. 6417 is scheduled to work commencing February 19, 1986, and continuing until Claimant J. A. Braxton is placed upon Position No. 6417, in addition to any other compensation Claimant may have received for this period, and

3. J. A. Braxton shall be placed on protective guaranteed status, per current Clerks' Agreement rules, if Claimant's seniority does not permit her to hold a permanent position on the Colorado Division. Placement on protective guaranteed status to be retroactive to date she normally would have been placed there in succession of seniority movement on Colorado Division for this time period."

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.

In the instant Claim, the Organization alleges Carrier violation of the Agreement wherein it refused to allow Claimant to displace on Zoned Extra Board Position No. 6417, the duties of which included providing relief on train order clerical positions. The Organization points out that Claimant had the fitness and ability to learn the responsibilities and duties of the position. Claimant had previously passed the Book of Rules, performed service on train order clerk positions and attended Dispatchers' School. The Organization argues that Claimant, under the Agreement, had sufficient and adequate fitness and ability for the position.

The Organization argues that no Rule of the Agreement requires Claimant to pass an exam or demonstrate abilities before being entitled to displace on the Zoned Extra Board Position involved in this dispute. The Organization maintains that Claimant had the fitness and ability to learn the position. Claimant should have been allowed to displace on the position and thereafter given the specified Agreement time to qualify.

The Carrier's position is that inasmuch as Position 6417 relieved train order clerical positions it had the right to have Claimant pass a test covering the Operating Book of Rules before allowing the Claimant to displace on the position.

The central issue in the case at bar is whether the Claimant must be qualified (having passed the Book of Rules within twelve months) before bidding on Position No. 6417, as Carrier argues, or having passed the test in prior years the Claimant has shown evidence of sufficient fitness and ability for bidding and displacing on the Zoned Extra Board Position.

In considering this issue, the Board finds that the case at bar turns on Carrier's letter of August 14, 1986. Therein, Carrier states in pertinent part that the Claimant:

"had not worked as a train order clerk in over six years.... Carrier requires that if an employe has not worked as a train order clerk in over one year, they must rewrite the Operating Book of Rules prior to bidding or displacing on a train order position. This has been the Carrier's handling in these matters for many years and the Organization has acquiesced to this procedure.... Claimant... did attend dispatchers school... in 1979... but Claimant failed to pass the Operating Book of Rules. This shows Claimant was not qualified... which is a requirement to be a train order clerk which the parties have been in Agreement on for many, many years."

The Board takes note of the fact that the Organization never rebutted the above assertions. Unrebutted assertions are accepted as fact.

The Board must therefore accept that on this property the Carrier has required examination on the Operating Book of Rules prior to being considered as having sufficient fitness and ability to displace on the Zoned Extra Board positions which relieve train order clerical positions. The record indicates that the practice has been clear-cut, accepted by both parties and of long duration. Under this same Agreement an examination has been held to be a proper requirement for bidding and displacement between these parties on other positions (Third Division Awards 25112, 25642). We cannot therefore find that the Carrier's action in the instant case was calculated to evade the Rules. Nor can we find that it was arbitrary or capricious.

As the moving party, the Organization has the burden of proof. The Organization did not refute that the Carrier has required that this examination be passed within one year of displacement if an employee has not worked as a train order clerk. There is nothing in this record indicating that the examination is unreasonable or unrelated to the determination of fitness and ability. In the facts and circumstances of this case, the Organization has not denied Carrier's assertions, nor presented evidence that Claimant had met the requirements to bid. Nor has the Organization presented probative evidence that the Claimant's prior experience six years earlier, or previous testing, established, ipso facto, sufficient fitness and ability.

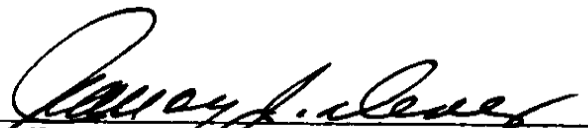
In reaching its conclusion that Carrier has not violated the Agreement, the Board has carefully reviewed the Awards presented before this Board (Third Division Awards 27283 and Dissent, 25112, 25642, 25462). From the on property record before us, there is no evidence that Carrier's judgment of fitness and ability or its required test (within one year of bidding or displacement) was arbitrary, capricious, discriminatory or in violation of the Agreement. In the facts and circumstances of this record, the Organization has not met its burden of proof. The Board has no alternative, but to deny the Claim.

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 29th day of June 1989.