

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Betty Foley
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(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM:

"(1) Company violated the Agreement between the parties when it denied Clerk B. Foley the position of Merger Clerk, #388, advertised on bulletin No. 17, dated February 21, 1984, in violation of Rules 6,8,10 and others of the Clerks' Agreement.

(2) Company shall now compensate Clerk B. Foley for the difference in rates between the position held and that of Merger Clerk, Central Call-board, Harvey, Illinois, until claim is resolved.

(3) Company shall now be required to compensate Clerk B. Foley 12 months pay (261 days) at the pro rata rate of the position now being occupied by the Claimant, or at the Merger Protected Rate, whichever is greater. In February of 1984 pursuant to the 1972 Merger Agreement the company offered separation allowance of 261 days pay to the Employees in Seniority District No. 1, Northern Division, who were in the Chicago home zone. This separation allowance was given to the former incumbent on position #388 Merger Clerk Dolores Burns, seniority date of January 24, 1969 but at the same time denied to the Claimant B. Foley seniority date of August 12, 1945. Thus the company in February and March of 1984 denied Clerk B. Foley both the separation allowance she requested and the change in work location she desired."

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 were given due notice of hearing thereon.

The Claimant bid on the position of Merger Clerk, #388, advertised on Bulletin No. 17 dated February 21, 1984. The incumbent of this position is responsible for determining the merger guarantee payments of employees in train and engine service. To do this, it is necessary to determine the jobs worked by the employee as well as any higher paying jobs to which the employee could have exercised seniority. This requires an understanding of the merger agreement, crew calling and seniority rules and the basis of compensation of trainmen and engineers. The Claimant was not awarded this position and a junior employee was assigned. As a result of not being awarded this job, the Claimant was not eligible for severance payments which were made available only to employees in freight service.

Rule 6(a) of the Agreement reads as follows:

"Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacement shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

Rule 10(a) of the Agreement provides:

"An employee awarded a bulletined position who fails to qualify within thirty working days shall retain his seniority rights and will be returned to his former position or status no later than thirty-six hours after removal from the position on which he failed to qualify."

These two Rules, when read together, permit the Carrier to assess an employee's qualifications to determine if the employee is capable of becoming qualified within thirty work days. Because of the reference to fitness and ability, Rule 6(a) is not a strict seniority rule. This Board has consistently deferred to the Carrier's judgment in such cases unless the Claimant proves that the Carrier exercised its judgment in an unreasonable, arbitrary, capricious or discriminatory manner. (See, for example, Third Division Award 20878).


Notwithstanding the Claimant's assertion that she was denied the job in order to keep her ineligible for severance pay, the record supports the conclusion the Carrier's decision was based upon her lack of experience in dealing with any of the operating craft agreements and rules, which would make it unlikely that she could become qualified on the job within the time allowed in Rule 10(a). Accordingly, we cannot conclude the Carrier abused its discretion in declining the Claimant's bid on this job. As the Claimant was not entitled to the job in question, the issue of severance pay becomes moot.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.