

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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-10323) that:

1. Carrier violated the intent and provisions of the current Clerks' Agreement at Dallas, Texas on September 17, 1987, when it failed and/or refused to assign Mr. B. J. Priest to Towerman Position No. 6187, and

2. Mr. Priest shall now be paid in addition to any payment already received, eight (8) hours' pay at the rate of Towerman Position No. 6187 (\$102.84 per day) for each day Tuesday through Saturday beginning September 18, 1987 for as long as he is held off this position, and

3. Claimant shall also be paid ten percent (10%) per annum until claim is paid."

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 Claimant, on September 9, 1987, bid on and was awarded a Towerman position. However, because the Carrier found that he had not attended a Rules class or taken a written test on the Book of Rules covering current operating Rules, it changed the assignment bulletin and awarded the position to a junior employee. The Organization contends that the Carrier's failure to assign the Claimant to the Towerman position violated a number of the provisions of the parties' Agreement pertaining to "Seniority, Promotions, Assignments and Fitness and Ability."

The Carrier mainly argues that it has a well-established right to require the test at issue and, for whatever reason, the Claimant at the time he bid for the Towerman's position had not taken the test. Because successful completion of the test was a prerequisite for all holders of the position, it rejected his bid for the position.

There are a number of issues and various ramifications to this dispute that both parties have pursued that actually are not germane to the controlling questions. Moreover, certain matters have been raised by both parties in their submissions to this Board that were not brought forth on the property. Therefore, these will not be considered in our deliberations on this matter.

Clearly, the Carrier has the prerogative to determine the fitness and ability of employees for its positions. However, in exercising its managerial rights on such matters, it goes without saying that it must be done with reasonableness and consistency. The record shows that the reasonableness of the test at issue has been examined and upheld on this property by past Third Division arbitral authority. We have no reason to disturb those holdings, and do not, in this Award. However, there are unanswered questions that strike to the heart of this dispute and its resolution. The Carrier contends on the property that the "Rules Test" is required "of all clerks across the system." But, the Carrier never substantively refuted certain key assertions by the Organization and the Claimant in their letters of October 13, 1988, and March 14, 1988. These show, among other things, that the Claimant worked as a Towerman or Instructor for the Towerman position. The Board, thus, must conclude that he was qualified. Moreover, while the Carrier on the property has denied that the Rules Examiner told the Claimant that he did not have to requalify, the Carrier did not refute the assertion with respect to the RFD at Dallas, that the Claimant's personal records showed that he was qualified for the position and that the Carrier Bulletin A-10, dated March 4, 1986, addressed to all clerical employees (paragraph (2) (B)) would qualify the Claimant because he has "worked as Towerman." In view of all of the foregoing, Part 1 of the Claim is sustained. With respect to Part 2 and Part 3 of the Claim, because the Claimant was fully employed and suffered no loss of earnings and because there is no Agreement support for the Claim for damages, they are denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Executive Secretary

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