

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29347
Docket No. CL-29068
92-3-89-3-506

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: Transportation Communications International Union
 Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10401) that:

1. Carrier violated the effective agreement when it failed to assign Clerk A. M. Tomko to the temporary vacancy on the position of Head Duplicating Machine Operator, effective March 14, 1988.

2. Carrier shall now compensate Ms. Tomko for the difference between the rate of her position of Senior Office Machine Operator and that of Head Duplicating Machine Operator for March 14, 1988, and for each and every day thereafter that a like violation occurs.

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 employees involved in this dispute are respectively carrier and employees 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 this dispute the Organization relies, in large part on the provisions of Rules 28 and 35, which state:

"RULE 28

PROMOTIONS, ASSIGNMENTS AND DISPLACEMENTS

(a). Seniority rights (seniority, fitness and ability) of employees to vacancies or new positions or to perform work covered by this agreement, shall be governed by this agreement.

(b). Employees covered by this agreement shall be in line for promotion. Promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

"RULE 35

FAILURE TO QUALIFY

(a). Employees entitled to advertised positions or those exercising displacement rights shall be allowed thirty (30) working days, with full opportunity, in which to qualify, and failing, shall retain all their seniority rights, may bid on any advertised positions, but shall not displace any regularly assigned employee.

Employees will be given reasonable cooperation in their efforts to qualify.

(b). When it is definitely determined that employees are not qualified for positions they may be removed before expiration of the thirty (30) day time limit, provided the local chairman is given reasons therefore in writing.

* * * * *

At the time of this dispute, Claimant was the Senior Office Machine Operator in a small office. The Head Duplicating Machine Operator became ill and was off for approximately three months. Carrier bulletined the position, for which Claimant applied, and Carrier determined that no applications were received from qualified employees and the position was not filled. The job description of the bulletined job is as follows:

"Operate all offset duplicating machines, camera and plate making equipment, and all other equipment in duplicating area. Must have extensive knowledge both in theory and practice in the operation of all offset duplicating equipment and ITEK, or similar type, plate making camera and peripheral equipment. Will operate various bindery equipment, folders, paper cutter, drills, binders, stapling machines, Varityper Model 1010 and operate Xerox 9400 or similar equipment. Misc. clerical duties as assigned." (Employees' Exhibit 'A')

In essence, the Organization argues that Claimant had an excellent record and worked in close proximity to the incumbent of the position in question. It is urged that she should have been given the thirty day period to qualify as provided in Rule 35.

Carrier asserts that the position in question required extensive technical training, such as a full printing course or comparable experience. Carrier states that Claimant had neither. Further Carrier argues that it has never assigned employees to positions for a thirty day period to qualify when they did not have the requisite skills to fulfill the basic job requirements.

In fitness and ability disputes, it is essential that the Organization presents prima facie evidence that the Claimant has the necessary skills to perform in the position. Here no such evidence is present. Further, there is no evidence that Carrier acted improperly or in violation of any Rules in making the determination that Claimant was not qualified. The Organization has failed to meet its burden of proof in this matter and the claim must be denied.

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 August 1992.