Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29465
Docket No. CL-29509
92-3-90-3-449

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

"(Carrier's File No. TCU-D-3149/TCU File No. 393-09-046)

Claim of the General Committee of the Brotherhood (GL-10492) that:

1. The Carrier acted in an arbitrary and capricious manner and in violation of Rules 5, 6, 8 and other related Rules of the Agreement, when on May 17, 1989 it failed or refused to award the Ticket Accounting Clerk position advertised in Bulletin No. FNC-530 to senior bidder, Accounting Clerk, Mr. Kerry Sheahan, but, instead, awarded the position to junior clerk, Ms. Theresa Stuckey-McCants.

2. The Carrier shall be immediately required to place Claimant, Mr. Sheahan, on the position and compensate him an amount equal to the difference between what he has been and will have been paid and what he would have been and would be paid had he been awarded the above described position; and Carrier shall, additionally, compensate Claimant three dollars ($3.00) per day, starting on May 29, 1989, for each working day he has been and will be withheld from the 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.

On May 10, 1989, Carrier advertised for application/bids a Ticket Accounting Clerk Position, Bulletin Number: FNC-530, in the Chicago, Illinois, Revenue Accounting Office. The description of duties and qualifications for this new, permanent position read in pertinent part as follows:

In response, the Organization filed a claim alleging that the Carrier had violated Rule 6 and other related Rules of the Agreement when it awarded the position to the junior employee.

Agreement provisions pertinent to this dispute are as follows:

"RULE 5
PROMOTION, ASSIGNMENTS AND DISPLACEMENTS

Employees covered by these rules shall be in line for promotion. Promotions, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability of applicants being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the prior right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.

The company shall be the judge of fitness and ability, but shall not act in a capricious, arbitrary and discriminatory manner in the application of this rule. Alleged violations of this obligation may be appealed in accordance with Rule 25 (Grievances)."

"RULE 8
FAILURE TO QUALIFY

(a) Employees awarded bulletined positions or exercising displacement rights will be allowed thirty (30) calendar days in which to qualify and failing to qualify may exercise seniority under Rule 10. The thirty (30) calendar days may be extended by agreement between the appropriate organization representative and the proper corporation official.

(b) When it is evident that an employee will not qualify for a position, after conference with the District Chairman, he may be removed from the position before the expiration of thirty (30) calendar days and be permitted to exercise seniority under Rule 10. The appropriate organization representative will be notified in writing the reason for the disqualification.

"Title of Position: Ticket Accounting Clerk

Rate of Pay: $ 75.42 - $ 100.56

Hours of Assignment: 8:00 am - 4:30 pm.

Days of Assignment: Monday through Friday.

Days of Rest: Saturday and Sunday.

Meal Period Assignment: 12:15 pm to 12:45 pm.

New Position or Vacancy: New Position

Vacated By: New Position

Permanent or Temporary Assignment: Permanent

Temporary Assignment - Probable Duration:

Description of Duties:

Must be knowledgeable of, and able to interpret train schedules, routing and subsequent connections. Must demonstrate and maintain proficiency in the use of Amtrak and/or other tariff publications and ARROW bulletins. Must be thoroughly familiar with Amtrak policies/procedures as they affect refunds, reservations and be acquainted with geography, fares and off-line routing. Specifically must be proficient in the area of inter-line route fares, open fares, circle trips, excursion and discounted fares and be capable of rating wholly unused and partially unused tickets. Must analyze, prepare and reconcile monetary reports. Must be able to clearly communicate, both written and orally, with passengers and other Amtrak personnel. Must become proficient in departmental procedures. Must be ARROW trained and fully qualified in system utilization. Perform other clerical duties as assigned. Must be a qualified ticket accounting clerk or have worked as a qualified ticket clerk within the past 12 months. Must comply with Amtrak Rules of Conduct, Safety Rules and Procedures."

The Claimant submitted a bid for this position. The Carrier determined that the Claimant did not possess the required fitness and ability under Rule 5 of the parties' Agreement. Effective May 17, 1989, the Carrier awarded the Ticket Accounting Clerk position to a junior qualified employee.

(c) Employees will be given full cooperation of the department heads and others in their effort to qualify.

(d) An employee who is disqualified from a temporary vacancy may immediately return to his former position."

For its part, the Organization asserts that the Carrier violated Rules 5 and 8 when it "ignored" the fitness and ability of the Claimant and denied him the position solely on the basis that he had not worked as a Ticket Clerk in the past twelve months. According to the Organization, the Claimant's prior positions have already qualified him for the position in dispute. Further, the Organization contends that Rule 5 does not require that an employee be fully qualified or have recent experience. The Organization asserts that the provisions of Rule 8 recognize that employees do not have to be qualified or have recent experience because the parties "have agreed that the employee will be allowed 30 days" in which to qualify. Finally, the Organization asserts that the Carrier has placed qualifications on this position that have been found to be improper in the past.

The Carrier admitted that two individuals were previously awarded this position through a "management oversight." In one instance, the Carrier did not investigate the time that had elapsed since an individual had been a Ticket Clerk. In the second circumstance, the Carrier maintains that the Organization submitted a grievance pertaining to the test being used to measure the applicant's qualifications. Rather than "penalize" the individual during the ongoing discussions, the Carrier stated that it chose to qualify her without the test. The Carrier further asserts that these two instances "do not overcome the Claimant's lack of fitness and ability" for the position.

There is no dispute that the Claimant was the senior employee applying for the position, however, while the Organization was able to prove prior experience of the Claimant, it was unable to prove the current capability and recent experience required by the bid. The record does not support the Organization's contention that this criteria was arbitrary or unreasonable. A long line of precedent supports Carrier's assertion that it has reserved managerial discretion in setting reasonable job standards. The balance of the issues raised by the Organization on this record are definitively resolved by Special Board of Adjustment No. 1033, Award 7 between these same parties:

> "The Carrier has outlined the numerous changes to the job brought on by computerization and electronic advances and the Board is convinced that the nine (9) years absence significantly altered the ability to perform. Further, the Organization has shown only a prior experience, but not a current capability.
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> Among other Awards, Carrier has relied specifically on Award #5, Public Law Board 4418. That Award decided a dispute between these same parties regarding Rules 5 and 8, and resolved the dispute against the Organization. We do not find the Award palpably erroneous and feel it controls here."

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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 7th day of December 1992.