

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29759
Docket No. CL-30043
93-3-91-3-456

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
(Western Railroad Association

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10619) that:

1. The Western Railroad Association violated Rules 4, 5, and 8 among others of the agreement when it allowed Calculator Operator/Clerk Position No. 63 to a junior employee in lieu of senior employee E. Chalmers on April 9, 1990.
2. The Association shall now be required to place Mr. Chalmers on Position No. 63 and compensate him the difference in rate of pay including overtime for each and every day beginning April 9, 1990, until such time as he (sic) reached or exceeds a comparable level."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 March 26, 1989 Position 063 was bulletined for bid under Finance and Accounting Bulletin No. 3. This bulletin enunciated the following requirements;

"Requires proficiency in operation of electronic calculator, adding machine and other similar equipment. A test will be given to determine proficiency."

The qualifying test involved a practice that had been followed for many years. Applicants tested prior to 1982 were measured for competency with a comptometer. When the nature of the work had changed both in complexity and volume, meetings were held with local representatives of the Organization advising them that Management intended to change the test to more adequately reflect the duties entailed in the position. Organization representatives did not protest the standard, nor the use of the test to determine qualified applicants.

Subsequent to 1982 the test for comptometer operator was modified and the applicants were tested on electronic calculators. Since the majority of accounting work is addition and subtraction, Carrier required demonstrated numerical ability as well as proficiency with a calculator.

Five applicants, including Claimant, initially applied for Position 063. None of the applicants achieved a passing score the first time on that test. Further, Carrier concluded that some senior bidders had applied for the position "for the sole purpose of preserving their protected rates." Accordingly, Accounting Department Bulletin No. 4 was issued on April 2, 1990 which stated:

"Requires proficiency in operation of electronic calculator, adding machine and other similar equipment. A test, to be administered by Finance and Accounting, will be given to determine proficiency.

Prior to testing, calculators will be made available to applicants interested in enhancing their skill. If desired, calculators may be taken home for practice, The Accounting Department will be available for any further assistance.

NOTE:

Employees will not be required to exercise their seniority on these positions in order to preserve their protected rates under Section 4 of Article IV of the Employee Protective Agreement, dated Feb. 7, 1965."

At the time of this second bulletin, calculators were made available to all applicants so that they could practice before the test. The set standard for the thirty (30) minute test was an 80% accuracy rating.

Two of the applicants, Mr. Cortina, seniority November 16, 1989, and Ms. Peggs, seniority January 2, 1990, achieved passing scores on the test. Mr. Cortina, who took the test for the first time on the second bulletining, scored 87%; Ms. Peggs, who had failed the first test with a 69%, scored 97% on her retest after practicing. Claimant Chalmers achieved a score of 67%, thereby raising his prior test score nine (9) points but, Claimant still failed to achieve a passing score on his retest after practicing. Based on these test scores, Position 063 was awarded to Mr. Cortina.

Subsequent to the award of that position, the Organization filed a claim on behalf of Claimant contending that "he should have been awarded that position based upon his seniority and the improvement of his test score between the first time he applied for the job and the second testing." The Organization cited Carrier for being in violation of the aforementioned Agreement rules.

Carrier denied the claim stating that the it has the "exclusive prerogative to determine the necessary fitness and ability for a position." Carrier further stated that there is "no requirement that the Claimant be given a fixed period of time in which to demonstrate qualifications if he is unable to meet the basic standards set for the position as determined by testing."

This claim was denied at all levels of appeal and pursuant to a conference on the property, this dispute was progressed to this Board for adjudication.

The Organization asserts that when none of the applicants achieved a passing score on the first test, the Claimant "should have been awarded the position by virtue of the rights guaranteed to all employees under Rule 8 of the Agreement." The Organization further asserted that the Claimant's low score was due to the fact that he did not have enough time to complete the test, and therefore, his score was not "a reflection of Chalmer's ability, but rather a time constraint" placed upon him. The Organization maintained that had Chalmers had enough time, he would have successfully passed the test.

For its part, the Carrier maintains that if "improvement is the only factor in awarding the position, Ms. Peggs, also taking the test for the second time, should have been awarded the position having achieved twenty-eight (28) points of achievement." Further, the Carrier asserts that "this is a very basic test and achieving

a passing score in the time allotted was the only requirement of the test." Carrier further stated that "Anyone could achieve a passing grade if there were no time constraints."

Carrier also pointed out that the Claimant "did not attempt to solve even one of the ten more time consuming--basic addition and subtraction problems." Carrier observes that Chalmers had "an extra two (2) weeks to prepare for the test, and still did not pass."

This Board has consistently held that the possession of "fitness and ability" is a requisite which must be met before seniority rights become an issue for promotion. The Carrier is well within its rights to rely upon, and adhere to, tests which reasonably measure requirements necessary to successfully perform any given position.

Claimant was given sufficient opportunity to prove himself adequate for Position 063. Claimant failed to display the fundamental fitness, ability and skills which were reasonably deemed necessary. Carrier did not violate Rules 4, 5 or 8 when it declined to offer the Claimant time in which to qualify for Position 063 Calculator Operator/Clerk. For the foregoing reasons, this claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.