

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29764
Docket No. CL-29528
93-3-90-3-582

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union)
(The Belt Railway Company of Chicago)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10524) that:

1. Carrier violated the effective agreement when it failed to permit Mr. Bennie Lewis to exercise seniority over a junior employe, thereby denying him the opportunity to demonstrate his fitness and ability for Position #511.
2. Carrier shall now compensate Mr. Lewis eight (8) hours' pay at the rate of Position #511, less the amount already paid, for May 1, 1989, and for each and every day thereafter that he is denied the position claimed."

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 employe 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.

Claimant held a clerical seniority date of August 25, 1959. Between 1959 and 1966, Claimant was a Yard Clerk in the Transportation Department. From 1966 to 1989, Claimant occupied various positions in the Stores Department and as of April 1989, Claimant was a Foreman in a Storehouse (a position he had occupied for the last fifteen years).

In late April, 1989, the Carrier reduced forces and a senior employee displaced Claimant who attempted to exercise his seniority to an AAR Clerk position effective May 1, 1989. On April 27, 1989, the Manager of Distribution in General Accounting barred Claimant's desired displacement. Thereafter, Claimant was permitted to displace to an Assistant AAR Clerk position.

On June 29, 1989, the Organization filed a claim contending that Claimant held the fitness and ability to hold the position of AAR Clerk and that the Carrier should have assigned him to the position and afforded him time to qualify pursuant to Rule 16.

At the onset, the Carrier urges this Board to summarily dismiss the claim because it was allegedly filed more than sixty days after the date of the Carrier's alleged violation. Rule 29, Section I(a) provides that claims must be presented within sixty days from "...the date of occurrence on which the claim...is based."

In this particular case, the Board finds that the date of the Carrier's alleged violation was May 1, 1989, the day that Claimant would have actually exercised his seniority to the AAR Clerk position. While the Carrier notified Claimant on April 27, 1989, that it would not allow him to bump into the AAR Clerk position, the Carrier's prohibition was not effective until May 1, the day that Claimant actually tried to exercise his seniority.

Since the June 29, 1989, claim was initiated within sixty days from May 1, 1989, the claim was timely filed.

Turning to the merits, the Board notes that Carrier submitted, at one point on the property, that Claimant needed to be qualified for the AAR Clerk position as a prerequisite to exercising his seniority to the position. The Board disagrees. Rule 8 provides that an employee may displace to a position and be afforded an opportunity to qualify in accord with Rule 16 if the employee possesses sufficient fitness and ability. Thus, the issue is whether Claimant had the fitness and ability to become qualified, pursuant to Rule 16, to master the duties of the AAR Clerk position.

Although Claimant had thirty years' experience with the Carrier, he failed to proffer sufficient evidence that he had some bookkeeping or accounting and/or car repair experience which would show that he had the ability to become qualified for the AAR Clerk position. It may be, that during the course of his work as Foreman in the Storehouse, that Claimant had an opportunity to become familiar with basic accounting principles and/or car repair billing systems. However, Claimant did not bring forward proof of such

experience. The Carrier retains the discretion to determine, in good faith, an employee's fitness and ability. In this case, the Manager thoroughly reviewed the Claimant's prior experience. He found that Claimant simply had no accounting related experience and that his prior railroad jobs were very remote from the position of AAR Clerk. Because of his lengthy tenure, the Carrier permitted Claimant to displace to an Assistant AAR Clerk position, a position that requires a lesser standard of fitness and ability than the AAR Clerk position. Claimant could acquire basic accounting knowledge while working as an Assistant AAR Clerk which would give him the fitness and ability to occupy an AAR Clerk position. Therefore, the Carrier did not exercise its discretion in an arbitrary or capricious manner.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

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