

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30040
Docket No. MS-29975
94-3-91-3-344

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Joseph Russo
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"The carrier violated the current working agreement by denying my seniority rights. We ask that the carrier allow me to exercise my seniority and compensate me the difference of the rate of pay, including over time (sic) from claim date to the date the claim is settled."

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.

Having been displaced from his position, the Claimant sought to exercise his seniority to displace on the position of Valuation Accountant. He was denied the opportunity to do so, as indicated in a letter from the Chief Engineer, reading in part as follows:

"I have reviewed your file and find that your educational background does not meet the criteria deemed necessary for this position nor does your work record indicate an adequate knowledge of or exposure to the theories and principles of accounting which are required for these positions."

The Claim contends that the Carrier acted in an "arbitrary and capricious manner" in failing to give the Claimant the opportunity to demonstrate his qualification for the position.

Relevant Rules are as follows:

"RULE 8 - PROMOTION BASIS

Employees covered by these rules shall be in line for promotion. Promotion, assignment, and displacement shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

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

"RULE 16 - TIME IN WHICH TO QUALIFY

- (a) Employees entitled to bulletined positions or exercising displacement rights will be allowed thirty (30) calendar days in which to qualify,..."

The established "Qualifications" for the position of Valuation Accountant includes the following:

"B.S. with a major in accounting or equivalent training and experience. Applicant must have thorough knowledge and understanding of the theory and principles of accounting, including introductory, intermediate and advanced, cost accounting and auditing principles."

There is no basis to show that these requirements are unreasonable or prohibitive, given the content of the position's responsibilities. The Carrier points out that the Claimant, while holding a B.S. degree in marketing, successfully completed only one course in accounting. As to his 19 years' experience with the Carrier, the Claimant has held clerical assignments relating to accounting for brief periods, but no actual accounting positions.

The right of the Carrier to make reasonable judgments as to an employee's "fitness and ability" is well established. There is no automatic right to a 30-day qualification period where it is

obvious, as here, that the employee does not have the underlying prerequisites for the position.

Three previous Awards, involving the same parties, were concerned with the same position. These are Third Division Awards 24478, 28646, and Public Law Board No. 4247, Award 8. While these involved different individuals with somewhat varying backgrounds, the Awards support the view, as found here, that (quoting Public Law Board No. 4247):

"Claimant did not possess the necessary qualifications, nor could he have been reasonably expected to develop them within the allotted time period."

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 17th day of February 1994.