

Form 1 **RECEIVED** NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

JAN - 5 1995

Award No. 30627  
Docket No. CL-31087  
94-3-93-3-126

G. L. HART

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International  
( Union  
(  
(Atchison, Topeka and Santa Fe Railway  
( Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union  
(GL-10935) that:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Schaumburg, Illinois, beginning February 14, 1991, when it failed and/or refused to properly award and/or assign a bulletined position to an appropriate employee in accordance with the applicable rules of the current Agreement, and

(b) Carol Barnhart, or one clerical employee as listed in the "STATEMENT OF FACTS", shall now be placed upon Rate Clerk Position No. 6036 and shall be compensated eight hours pay at the pro rata rate of Rate Clerk Position No. 6036 for each work day of that position commencing February 14, 1991, and continuing until an appropriate Claimant from the list is properly placed in Position No. 6036 and, such payment to be in addition to any other compensation such Claimant may have received."

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 February 5, 1991, the Carrier advertised for bids on Rate Quotation Clerk Position No. 6036 in the Customer Service Center, Schaumburg, Illinois. The position is a highly technical job that requires experience in rate quotation. After following the various rules, the Carrier in its opinion could not find anyone with sufficient fitness and ability for the position. Accordingly, it hired a new employee who had 25 years of rate clerk experience.

On May 24, 1991, the Organization filed a claim for nine different Claimants. Of the nine Claimants, none had bid on the job. In fact, only three of the Claimants had seniority on the roster to which the job was bulletined. The other six had filed an application under Rule 13 to be considered for transfer to some other seniority district, if they possessed sufficient fitness and ability, before non-employees were hired.

Of the three employees who had seniority to bid on the job, one was furloughed. Based on the employee's past work history the Carrier made the determination that the employee did not have the fitness and ability to handle the job, and he was not recalled to service. While the other two employees did not receive the bulletin, they were given an opportunity to bid on the job and both elected to remain where they were. While the Organization argues the Carrier did not have the authority to offer these employees the opportunity to displace on any job where they failed to receive the bulletin, the fact remains they chose not to do so.

The record reflects that the Carrier considered all six of the Section 13 Claimants and found they all lacked sufficient fitness and ability to handle the Rate Quotation Position. The Organization fails to show which employee has the sufficient fitness and ability to perform the work of the Rate Quotation Clerk.

This Board has held numerous times that the Organization has the burden of proof to establish that the Carrier erred when it failed to award a position to an employee who it felt lacked sufficient fitness and ability. In Third Division Award 20361, the Board held:

"Over many years this Board has held consistently that it is Carrier's prerogative to determine the fitness and ability of an employee for a position and such determination will be sustained unless it appears that Carrier was arbitrary or capricious in its actions (Awards 15494, 16360, 19129, and others). When Carrier determines that Claimant lacks fitness and ability, as in this case, Petitioner has the burden of proof to establish Carrier's error; that Carrier's action was arbitrary and capricious." (Emphasis Added)

The Organization has failed to meet its burden in this case.  
The Agreement was not violated.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.