

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31059
Docket No. CL-30404
95-3-92-3-188

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of
the Organization (GL-10686) that:

- (a) Carrier violated the current Clerks' and the current Zoned Extra Board Agreements at Fort Madison, Iowa on May 6, 1991, when it refused to accept Claimant Wiggenjost's timely bid on advertised permanent vacancy of Zoned Extra Board Position No. 6402, and assigned this position to a junior employee, and
- (b) Carrier shall now compensate Claimant Wiggenjost forty (40) pro rata hours pay at the Zoned Extra Board rate for each work week Monday through Sunday commencing Monday, May 6, 1991 and continuing until such time Claimant is assigned and is allowed to protect Zoned Extra Board Position No. 6402. In addition Carrier shall pay all premiums on Claimant's Health Care Plan of the Employees Benefit Association and the Health and Welfare benefits under the Health and Welfare Plan of the Nation's Railroads and the Railway Labor Organizations as required for the month involved as though service was performed on the dates involved. Carrier shall also be required to calculate these dates as days of service in determining qualifying days for vacation and holiday pay purposes. Furthermore, Carrier shall be required to establish protection for Claimant Wiggenjost pursuant to Appendix No. 9, of the current Clerks' Agreement."

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 April 29, 1991, the Carrier advertised a permanent vacancy on Zoned Extra Board Position No. 6402. This particular Zoned Extra Board position protects Bridge Operator positions on the Mississippi River Bridge at Fort Madison, Iowa.

Although Claimant was the senior bidder, the Carrier awarded Position No. 6402 to an employee junior to Claimant. The Carrier rejected Claimant's bid on the grounds that he lacked sufficient fitness and ability to fill a Bridge Operator position.

Rule 8 and the Note following Rule 8 of the applicable Agreement provide:

"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 rights of the senior of two or more qualified employees having adequate fitness and ability for the position or vacancy sought in the exercise of seniority."

The Organization initiated a claim contending that Claimant, who was in off-in-force reduction status, should have been awarded the vacancy on Position No. 6402 because he not only possessed sufficient fitness and ability but also, Appendix 10, which governs zoned extra board jobs, requires the Carrier to train employees desiring to hold such jobs.

The record reflects that during a period of time from October 1990 to May 1991, Claimant broke in on Bridge Operator positions at least three times a week while he was in off-in-force reduction. Despite the substantial amount of time that Claimant spent attempting to learn the duties of the Bridge Operator position, he failed two opportunities to demonstrate that he could eventually qualify for the position.

On November 30, 1990, the Assistant Superintendent observed Claimant's performance as a Bridge Operator at the Mississippi River Bridge. In his letter dated December 4, 1990, the Assistant Superintendent determined that Claimant was not qualified for the position because he made numerous errors. For example, Claimant became confused when he had to collect a toll while counting his funds causing him to begin the count anew. When he finished counting, his tally did not reconcile with the tape showing the aggregate amount of tolls collected. His second attempt at reconciling his cash drawer was also unsuccessful. In addition, Claimant was unable to follow the proper sequence of procedures to raise a rail lock so that a Signal Supervisor could conduct a test.

Several months later, Claimant again attempted to qualify for the position. On May 3, 1991, the Assistant Superintendent observed Claimant's performance on the Mississippi River Bridge. Although Claimant had been given advance notification that a tow was approaching the bridge, Claimant continued to collect tolls and allow autos onto the bridge instead of opening the bridge to permit the tow to pass. Even after the Tow Captain radioed Claimant that he was getting too close to stop, Claimant continued to take tolls. At the last possible second, Claimant started to open the bridge but he closed the gates before automobiles had cleared the opposite end of the bridge. To prevent an accident, a Bridge Operator had to intervene. The Assistant Superintendent therefore concluded that not only was Claimant not qualified for the Bridge Operator position but that he would never be able to become qualified for the position.

"Sufficient fitness and ability," as those words are used in Rule 8, means that an employee must be given an opportunity to qualify for a job if the employee evinces the minimum capacity to be able to master the duties of the position. Sufficient fitness and ability does not mean that an employee is immediately qualified to execute the duties of the position.

Despite a number of months of breaking-in on the job, Claimant manifested an inability to ever be able to learn the essential elements of a Bridge Operator position. The occupant of the Bridge Operator position must be able to juggle a number of different tasks and exercise prudent judgment when operating the bridge to

accommodate river traffic. In this instance, Claimant showed that he was unable to reconcile his cash drawer. Claimant's inability to reconcile his cash drawer demonstrates that he cannot be entrusted with taking tolls which appears to be the easiest part of the job. On his second attempt to qualify, his procrastination in opening the bridge almost caused a tragic accident. Even though the tow passed safely by, Claimant almost caught a car on the bridge. Claimant does not hold the judgment necessary to safely operate the bridge. Claimant's serious errors show that he will never master the essential elements of the Bridge Operator position. Correspondingly, he does not possess sufficient fitness and ability to fill Zoned Extra Board Position No. 9402, inasmuch as that position exclusively protects Bridge Operator positions.

Similarly, the Carrier did not violate Appendix 10. Claimant had ample time to learn the Bridge Operator job. The Carrier gave him two opportunities to show if he had sufficient fitness and ability. Claimant's performance actually demonstrates that regardless of the amount of training which the Carrier afforded Claimant, he was most likely not going to master the duties of a Bridge Operator.

AWARD

Claim denied.

ORDER

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 1st day of September 1995.