

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31855  
Docket No. CL-32234  
96-3-95-3-24**

**The Third Division consisted of the regular members and in addition Referee Fred Blackwell when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization (GL-11117) that:**

**(a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 5, 6, 8, 32 and other rules, when they acted in a capricious, arbitrary and discriminatory manner by considering Claimant Kepner not qualified as a Clerk/Typist and failed to honor Claimant Kepner's right to exercise her seniority when she bid for bulletined position, Clerk Typist/Statistical Clerk, advertised February 10, 1993, and they instead honored and allowed junior employee T. Dively's bid and awarded her the involved position effective February 17, 1993.**

**(b) Claimant Kepner should now be allowed eight (8) hours pay based on the pro-rata daily rate of \$105.20 per day, commencing February 17, 1993, and continuing for each and every workday thereon after, on account of this violation.**

**(c) Claimant Kepner clearly possessed sufficient seniority, fitness and ability and should have been awarded the involved position, by the fact that when the Carrier administered a typing test to Claimant, she scored 41 words per minute. Therefore, it is both reasonable and appropriate to consider Claimant Kepner qualified and that she should have been awarded the involved position instead of the junior employee.**

**(d) This Claim has been presented in accordance with Rule 25 and should be allowed."**

**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 were given due notice of hearing thereon.

The subject claim arises in the Albany/Rensselaer, New York area, whereat Claimant, the senior bidder on a Clerk Typist/Statistical Clerk position in the Transportation Department at Albany/Rensselaer, was considered not qualified for the job because the advertisement of the position had a 50 words per minute typing requirement in the job description, whereas the Claimant scored 41 words per minute on a typing test administered by the Carrier's administrative personnel. The job was awarded to junior Clerk T. Dively whose typing test results exceeded 50 words per minute.

The Organization asserts that the Carrier violated Rules 5, 6, 8, and 32 by its refusal to place Claimant in the position in question and afford her a training opportunity of 30 days in order to qualify on the job. The Organization further asserts that because the Claimant's score of 41 words per minute was 82 percent of the required 50 words per minute, the conclusion is inescapable that within 30 days the Claimant would have attained the required level of 50 words per minute.

The Carrier asserts that its administration of the Claimant's bid for the job in question was proper and that its actions concerning the Claimant did not violate any of the Rules cited by the Organization. The Carrier submits further that its policy is to allow a 10 percent credit on typing tests, and that if the Claimant had attained the level of 45 words per minute, the Claimant would have been considered qualified for the Clerk Typist position. The Carrier submits that this policy is reasonable and that its

decision not to treat 41 words per minute as demonstrating qualifications for the disputed position was not arbitrary and unreasonable.

Both the Organization and the Carrier cite prior authorities in support of their respective positions in this case.

After due assessment of the foregoing and of the entire record, the Board finds that none of the Rules cited by the Organization, separately or in combination, require the Carrier to afford a 30 day training opportunity to a job bidder who fails to meet a reasonable typing proficiency requirement. The Board also finds that the typing requirement in this case, 50 words per minute, is reasonable, especially in view of the 10 percent credit applied by the Carrier which makes the requirement 45 words per minute in actuality, as compared to the Claimant's score of 41 words per minute. It is further found that Rules 5 and 8, read separately or together, simply do not yield the meaning that every senior job applicant is entitled to a 30 day qualifying period on the advertised position.

In respect to the numerous authorities cited of record in this case, the Board observes that such authorities have produced mixed rulings, some of which clearly support the Organization's position that Rules 5 and 8 provide that a senior bidder, such as Claimant, shall be allowed a 30 day period in which to qualify on an advertised vacancy. For example, in a dispute between these same parties in Public Law Board No. 2792, Award 18, the Board sustained the claim of a senior bidder who, in the Carrier's judgment, lacked sufficient fitness and ability for a Micrographic Specialist position because, although qualified to operate 16 mm graphics equipment, the Claimant was not qualified to operate all equipment referenced in the minimum qualifications of the job bulletin: 16 mm, 105 mm, and 35 mm microfilm applications. The Board observed in Award 18 that:

"The established interpretations of Rules 5 and 8, read together, is that the employe applicant possesses 'sufficient' fitness and ability for purposes of Rule 5 if s/he may reasonably be expected to competently perform all the duties of the job within the 30-day qualifying period of Rule 8."

Other of the Awards cited by the Organization tend to support the Organization's position regarding the right of a senior bidder to have a 30 day qualifying opportunity on the bulletin position: Public Law Board No. 3148, Awards 3 and 4; Special Board of Adjustment No. 1011, Award 176; and Third Division Award 14762.

On balance, however, the Awards cited by the Carrier are more closely on point with the confronting facts and issues and more persuasive than the Organization's Awards.

In denying the claim of a senior bidding Clerk in Public Law Board No. 2296, Award 134 (these same parties) the Board held that failure to meet a typing speed requirement was sufficient to preclude a senior bidder from being awarded an advertised position:

"Claimant was displaced by a senior employee ... and attempted to displace a junior employee from a Statistical Clerk position effective Tuesday, July 28, 1981. Claimant had previously bid for this position but she was not assigned due to her failure to pass the test requiring a typing speed of 50 wpm....

\* \* \*

As claimant did not meet the requirements of the position on July 28, 1981, she was not entitled to the position."

A denial ruling was also issued in Public Law Board No. 4208, Case 4 (these same parties) on the basis of the following finding:

"There is no dispute among the parties that Claimant did not already possess all the requisite qualifications. The Organization, however, believes that Claimant could become properly qualified within thirty days on the job. Carrier, on the other hand noted in its submission that 'it has been established policy and practice at the Chicago RSO not to permit a bump to occur...unless the person met the qualifications for the job or was a qualified ticket clerk.' Qualification for the job was achieved by taking a six-week training course. Based on the evidence before us, this Board cannot conclude that this policy was an unreasonable one or that it was not fairly enforced."

A like ruling was issued in Third Division Award 29759 which denied the claim of an employee who asserted that his failure on a proficiency test of office equipment was not a valid reason for the Carrier not to place him on a finance and accounting position advertised by job bulletin. In denying the claim, the Board made these observations:

"Carrier denied the claim stating that 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 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 ... (Third Division Award 29759)."

In view of the foregoing, and based on the whole record, the Board concludes that the claim is not supported by the cited Rules and by the record evidence and accordingly, a denial award is in order.

**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 4th day of March 1997.**