

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32216
Docket No. CL-31844
97-3-94-3-172**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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-11027) that:

(a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly Rues 5, 6, 8, 32 and other rules, when they acted in a capricious, arbitrary and discriminatory manner by considering Claimant Waldron not qualified as a Ticket Clerk, effective April 21, 1992, based on her allegedly not passing a test which was illegally administered by the Carrier and as a result refused to allow Claimant Waldron the right to exercise her seniority on to the position of Ticket Clerk, Symbol A2, located at Rensselaer, NY, tour of duty 5:45 a.m. to 2:15 p.m., by displacing junior employe R. Murphy, effective April 21, 1992.

(b) Claimant Waldron now be allowed eight (8) hours pay based on the pro-rata daily rate of \$105.68 per day, commencing April 21, 1992, and continuing for each and every work day thereonafter, on account of this violation.

(c) Claimant Waldron clearly had sufficient seniority, fitness and ability, by the fact that she was previously considered qualified as a Ticket Clerk, held identical positions in the past and should have been allowed to displace the junior employe.

(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.

At the time this dispute arose, Claimant was returning from a medical leave of absence. During the medical leave of absence, Claimant's position of Purchase Order Clerk was abolished. Accordingly, Claimant had displacement rights in accordance with the parties' Corporate Clerical Agreement upon her return. She opted to displace on a Ticket Clerk position at the Rensselaer, New York, station. Because Claimant had not worked as a Ticket Clerk-Agent since April 1986, she was advised that it was necessary for her to take a standard Ticket Clerk test given to any employee bidding or displacing on the Ticket Clerk position who had not worked on such position for more than a year.

Claimant was given certain materials pertinent to the ticket test prior to taking the exam. Claimant failed to successfully pass the Ticket Clerk test and her displacement to the Rensselaer Ticket Clerk position was not allowed.

The Organization claims that Carrier's actions in denying Claimant the position violated Rule 5 (Promotion Assignments and Displacement) and Rule 8 (Failure to Qualify). It also contends that the test was illegally administered and that prior Awards have precluded examinations for qualifications as opposed to fitness and ability.

Carrier, on the other hand, asserts that this is precisely the application of the general management prerogative of testing for fitness and ability. It insists that the position of Ticket Clerk changes frequently due to modified train service, fair rules pricing practices, new types of fair plans, ticket exchange policies and the prepaid order systems. For this reason, it insists that examining Ticket Clerks who have not had

experience in the position for one year or more is clearly appropriate. It insists that Claimant was treated in according with the procedures that Carrier notified the Organization about effective January 8, 1992.

We are persuaded that this case properly falls within the general line of cases involving fitness and ability. In these cases, it has long been held that Carrier has the unilateral right to determine fitness and ability as long as it does so in good faith. That is, Referees have long held that a Carrier's initial determination of fitness and ability will not be overturned unless it is established that such assessment was arbitrary and capricious. For this reason, generally we agree with Carrier's right to test for fitness and ability. To do so, contrary to the Organization's contention, is not illegal.

Here, however, we do not believe that Claimant's fitness and ability was at issue. Claimant obviously had the fitness and ability to perform the Ticket Clerk position in light of the fact that she had done so in the past and had never been found to have performed unsatisfactorily.

In this case, for this particular Claimant, the test was not to seek review of her fitness and ability. Instead, the topics which the Carrier wished to test go to the question of familiarity and knowledge. They do not go to the issue of her fundamental fitness or ability. Rather, it is familiarity and knowledge of the details of the Ticket Clerk position that Carrier was assessing, e.g., fair rules, pricing practices, ticket exchange policies. These are precisely the types of things that Claimant should have been able to learn during the familiarization process for her new position. Rule 8 provides 30 days to qualify just for this purpose. Obviously, if after a 30 day period Claimant was unable to understand these procedures, Carrier would be absolutely right to disqualify her and remove her from the position.

Thus, we conclude that the test administered, while reasonable for individuals who have not previously demonstrated fitness and ability, was inappropriate for this particular Claimant under these particular circumstances. Therefore, we conclude that her claim shall be sustained until she exercised her seniority on April 27, 1992 to another position.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 17th day of September 1997.