

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32455
Docket No. CL-32083
98-3-94-3-481**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11083) that:

- (1) Carrier violated the effective agreement when it failed to recognize the seniority of Ms. Earlee M. Mitchell and refused to permit her to displace a junior employe and to demonstrate her fitness and ability to qualify for a position.**
- (2) Carrier shall now compensate Claimant Mitchell for the difference between the rate of her position (Extra Board) and that of Position 102 (Lead Clerk) beginning March 11, 1991, and continuing for each and every day thereafter that Claimant is not permitted to occupy the higher rated position.”**

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.

This is a fitness and ability dispute wherein the Claimant was displaced from her position and attempted to exercise seniority to the position of Lead Clerk in the Accounts Receivable Bureau. There is no dispute that the Claimant had 21 years in service to the Carrier with eight of those years in the Accounts Receivable Department. She had been Lead Clerk in the Billing Department. Her attempt to displace a junior Lead Clerk was denied by the Carrier. The Organization vigorously disputes the Carrier's action.

This Referee has often reviewed Agreement Rules and disputes pertaining to fitness and ability issues (Second Division Awards 13032, 13031, 13030, 13013, 12012; Third Division Award 32189; Fourth Division Awards 5004, 4956, 4955). Countless times the Board has stated, as it did in Third Division Award 22029 that once the "Carrier determines that the claimant lacks sufficient fitness and ability, the burden is then upon petitioner to establish Carrier's error by substantive evidence." Herein, the Board finds that the Organization did not carry its burden of proof. The Carrier's denial was based upon the evaluation of her immediate Supervisor who stated that the Claimant lacked both the fitness and ability for the position. The Supervisor stated that the Claimant was "still non-receptive to criticism of her errors by others" and "does not possess sufficient knowledge to enable her to train others, which is required of a Lead Clerk." He further stated that the Claimant "does not possess the ability nor the desired temperament to provide direction to her peers, which is required of a Lead Clerk." The Board finds a lack of refutation or the submission by the Organization of substantive evidence to demonstrate that the Carrier was wrong. Accordingly, the claim must be denied. This decision is supported by many decisions of the Board (Third Division Awards 30040, 24754, 21243, 20787, 16360).

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 21st day of January 1998.