

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33904
Docket No. MS-33902
00-3-97-3-379**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Tracey M. (Pitts) Cansler
PARTIES TO DISPUTE: (
(NJ Transit Rail Operations**

STATEMENT OF CLAIM:

“Ms. Woods, on the date in question, I was on the job only three days before the supervisor disqualified me. On February 23, 1988, I have already taken a stenographers test because I was hired for a steno job that could not be filled by the employees of the company. My complaint to you is this, the Captain of the Police Department did not want me in his department because as he stated, “he had not had a secretary for nearly 5 months and had to hire the secretary I had displaced from the streets.” Therefore, he tried to find means to disqualified me already in his mind.

One of the clerical duties in that department is to take dictation and transcribe all of the departments hearings and investigations by hand. I was made aware of that before I took the job. This particular day, I transcribed a five page document for the hearing by using my stenography skills. Mind you, most departments now use dictaphones for hearings. This day, I did this by hand. There was a letter in my file stating that I did not pass the steno test. When you are hired in the company, there are three separate entities. (1) Rail, (2) Bus (3) Corporate. I was hired for Rail.

When I wanted to get promoted to Corporate, I had to take a test again for the position. That included a typing test, grammar test, and steno test. The same tests I had to take when hired for Rail. I did not pass the steno test which was placed in my Rail personnel file. Captain Frenzel investigated my file (which I did not know letter was in there) and saw that letter.

He assumed I could not take steno, but I showed him the five page diction of his hearing and he would not accept it. And also, the Human Resource Department who put the test in the file wrote a letter to Captain Frenzel stating that the steno test has nothing to do with the contractual rules of the agreement and should not be held against me. Captain Frenzel said he just wants me out of the department.

I was very hurt, because I knew I could do the job and I am a excellent secretary. I have been a secretary f or the last 16 years. I worked in Law Firms, Accounting Firms, and Hospitals. I have much experience.

Anyhow, throughout my tenure with NJ TRANSIT, I have always worked as a stenographer. I collected from the Assignment office, which is part of the Labor Relations Department all my previous jobs held which were mostly Sr. Clerk Stenographer. A stenographer not only transcribes, but has excellent grammatical english.

Now, I am under paid, and I'm a overqualified for many jobs within the company. They are stating that I need to take the test because I have never taken the test, but I have and it is on record. Again, the Captain never gave me a chance to qualify and I believe there was malice in his decision. I would like to appeal this decision on the grounds of the below stated rules.

1. According to the TCU Agreement with NJ Transit, Rule 41 Claims for Compensation-Grievances it states that:

“the Carrier shall, within sixty (60) days form the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented,

(b) a claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is listed for discussion with the Manager-Labor Relations by the employee or his duly accredited representative within sixty

(60) days after the date it was denied. A claim or grievance listed ten (10) days prior to the date of a scheduled monthly meeting with the Division Chairman will be discussed at such meeting. When a claim or grievance is not allowed, the manager-Labor Relations will so notify, in writing however listed the claim or grievance (employee or his duly accredited representative) within (60) days after the date the claim or grievance was discussed of the reason therefor. When not so notified, the claim or grievance will be allowed as presented."

I was never notified and neither was Union Representative of this decision at the Manager's Level which is the first procedure and acknowledging a claim has been submitted by the employee of the Carrier.

2. According to Rule 4 - Qualifications for Bulletined Positions or vacancies., Rule 8 and Rule 44.

Ms. Woods, I do hope you can understand why I am grieving this case. According to the evidence and contract, Labor Relations should have sustained the decision of letting me work as stenographer especially when such decision for the Carrier's behalf would only uplift and produce effective work flow for the Carrier and not stifle the Carrier.

The Manager of Labor Relations and also the Carrier know that as an employee who previously worked as a stenographer for the company, wishes only to be loyal and to be the one of the best employees by utilizing my secretarial skills which were gained from an established secretarial school and to continue to advance my education, so that Carrier will continue to have a quality work force."

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.

Claimant has been employed by Carrier since 1988 in various clerical capacities. Claimant exercised her seniority to Carrier's Police Department's Senior Clerk Steno position effective September 21, 1995. After Claimant worked in the department for 3 ½ days, Police Captain Frenzel concluded that her stenography skills were not satisfactory. A meeting was held pursuant to Rule 8 between the Police Captain, a Labor Relations Representative and the Local Chairperson. It was decided therein that a steno test would be administered to Claimant; if she passed she would remain in the position, and if she failed she would be removed. Claimant went to the Personnel Department to take the steno test on September 26, 1995, but left without doing so. Claimant was considered to have failed the test and was disqualified from the steno position on that date. The record reflects that Claimant had taken and failed the steno test previously on August 24, 1994, and subsequently on July 11 and October 23, 1996.

The Organization protested the disqualification on the basis that Claimant was a qualified Steno and should not have been required to take the test. A Manager level meeting was held on January 9, 1996. In Carrier's denial dated March 8, 1996, it stated that Claimant was given the opportunity to show her proficiency, but elected not to do so. Carrier claimed it was within its right to determine qualifications. In its May 15, 1996 denial, Carrier argued that Claimant constructively removed herself from the position by choosing not to take the test.

Claimant argues (1) that she did not receive proper notification of the decision to deny the claim at the Manager's level, (2) that she was not given the entire 30 day period within which to qualify for the position, (3) that she exhibited her steno skills by transcribing a 5 page Investigation on her first day on the job, (4) that the Police Captain used discrimination and prejudice to have her disqualified in favor of his long time Secretary, and (5) that she was qualified for this position and had acted in a Steno capacity for Carrier in many of her past positions. Claimant notes that the procedure

for taking the steno test is different than it was 10 years previous and that techniques had changed over that time period. Claimant requests that Carrier lift her disqualification and that she be permitted to exercise her seniority and bidding rights as a Clerk Steno.

Carrier contends that the appeal is flawed since the bulk of it contains new arguments which were never discussed on the property. It notes that it complied with Rule 41 by sending its initial response to the Organization within the time period mutually extended by the parties, and that it was not obligated to serve Claimant a copy of that letter since the Organization was progressing the claim at the time. With respect to the merits, Carrier argues that it has the unabridged right to determine qualifications, citing Special Board of Adjustment No. 956, Awards 29 and 44, and acted properly and with the Organization's agreement in requiring Claimant to take a steno test to determine her fitness and ability to perform the position. See Third Division Awards 15626, 27939, 29759, 30973, 33177, 33182.

The Board has considered the procedural arguments made by each party and determines that this matter is best resolved on its merits. A careful review of the record convinces the Board that this claim must be denied. There is no dispute that Carrier acted appropriately and in compliance with Rule 8 when it met with the Local Chairperson to discuss its belief that Claimant was not satisfactorily performing the job. At that meeting the parties agreed that Claimant's qualification would be determined by the results of a steno test. Claimant's decision not to take the test effectively removed from her the argument that she was, in fact, a qualified Stenographer. There is no showing that Carrier acted arbitrarily or in a discriminatory manner in concluding that Claimant's refusal to take the agreed-upon test amounted to a failure of the test, permitting disqualification. The record reflects that Claimant was given every opportunity to take and pass the steno test, but failed to do so. This Board has consistently upheld Carrier's right to determine qualifications of this nature by administering an appropriate test. See Third Division Award 15626.

Under such circumstances, it cannot be said that Carrier's decision to disqualify Claimant from the position in issue violated the Agreement or was discriminatory. Accordingly, the claim must be denied.

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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 24th day of January, 2000.