

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33987  
Docket No. CL-34912  
00-3-98-3-626

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-12148) that:

The following claim is hereby presented to the Company in behalf of Claimants Juanita Rustin, Dorothy Burroughs and Betty McKinney:

- (a) The Carrier violated the Amtrak Clerks' Rules Agreement, particularly Rules 8, 10 and other rules when on February 3, 1997, Claimants Rustin, Burroughs and McKinney were not allowed to displace junior employee Micrographics Specialist R. Dixon, D. Sappington and E. Engle respectfully, by supervisor L. Howell.
- (b) Claimants now be allowed \$120.64 per day for each and every work day those positions worked beginning on February 3, 1997 and continuing until this claim is settled. Claimants should also be allowed \$15.08 at the punitive rate of time and one half for each and every hour Claimants would have been able to work overtime during the previous mention time frame; and finally Claimants should be placed in the above stated positions on account of this violation.
- (c) Claimants were in bump status, showed both fitness and ability to do the job and should have been allowed to displace the junior employees and allotted thirty days in which to qualify as allowed by the Agreement.
- (d) This claim has been presented 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.

In February 1997 the Credit Sales Operation in Washington, D.C. was transferred to Philadelphia. The positions of the Claimants, Juanita Rustin, Dorothy Burroughs and Betty McKinney, were abolished when the operation was transferred. The Claimants chose not to transfer with their positions and attempted, on February 3, 1997, to displace Micrographics Specialists R. Dixon, C. Sappington and E. Engle. The Carrier refused to allow the displacements for the Micrographics jobs. The initial grievance of March 11, 1997 was denied on May 6, 1997, as was the subsequent appeal to the highest Carrier Officer designated to handle claims and grievances.

The Organization alleges that the Agreement was violated when the Carrier refused to permit the Claimants to displace junior employees holding Micrographics Specialist positions. The Organization asserts that the Claimants need not be fully qualified to bump per Third Division Award 29712. The Organization alleges that Rule 8 - Failure to Qualify, was violated by the Carrier.

**“RULE 8 - FAILURE TO QUALIFY**

- (A) Employees awarded bulletined positions or exercising displacement rights will be allowed thirty (30) calendar days in which to qualify and failing to qualify may exercise seniority under Rule 10. The thirty (30) calendar days may be extended by agreement between

the appropriate organization representative and the proper corporation official.

- (B) When it is evident that an employee will not qualify for a position, after conference with the District Chairman, he may be removed from the position before the expiration of thirty (30) calendar days and be permitted to exercise seniority under Rule 10. The appropriate organization representative will be notified in writing the reason for the disqualification.
- (C) Employees will be given full cooperation of the department heads and others in their effort to qualify."

The Organization cites Third Division Award 29712 as being key to its position. It reads in pertinent part :

"... The distinction between "fitness and ability" and "qualifications" is of considerable importance in this industry. When the Carrier looks to fitness and ability of current employees, it looks to seasoned workers who are major assets and who have the potential to switch to lateral jobs, or who can upgrade to more complex jobs in a reasonably quick time frame. Such employees, in turn, do not have to be qualified to hold a position to which they bid, by seniority, under the protection of their Agreement: they need only to have the reasonable potential to do the job as outlined by Rule 5. Rule 8, gives them 30 days in which to qualify."

The Carrier asserts that the Claimants were not permitted to exercise their seniority to the Micrographics positions because they lacked the threshold skills required for the position. The minimum qualifications for the Micrographics positions, state in pertinent part:

**"AGREEMENT STANDARDS & QUALIFICATIONS FOR  
MICROGRAPHICS SPECIALIST - BN138**

**WORK EXPERIENCE:** Minimum of four years work experience in production Micrographics Service Bureau that encompassed the use of 105 mm, 35 mm and 16 mm microform applications/systems. Must know

**ANSI, AIIM, and DOD technical industry specifications/standards, records, micrographics and information management concepts. Demonstrated ability to operate 105 mm, 35 mm and 16 mm Micrographics equipment/systems, provide technical analysis and monitor vendor activities. Experience with the analysis, implementation and operation of electronic document image systems, including the ability to scan quality controls and index of information prior to storage on optical media."**

**The Carrier points out that when the Claimants first attempted to displace the incumbent Micrographics Specialists on February 3, 1997, they were asked about their Micrographics experience. All Claimants indicated they had never worked in the Micrographics field and had no knowledge of the duties and skills needed for the position. Hence, the Carrier determined they lacked the threshold skills required to displace the junior employees. In support of its position on this point, the Carrier cites the applicability of Rule 5 - Promotion, Assignments and Displacements, which reads in pertinent part:**

**"RULE 5 PROMOTION, ASSIGNMENTS AND DISPLACEMENTS**

**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 right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.**

**The Company shall be the judge of fitness and ability, but shall not act in a capricious, arbitrary and discriminatory manner in the application of the Rule. . . ."**

**Additionally, the Carrier contends that the Agreement does not require it to allow a senior employee to displace a qualified employee and then train the senior employee for the desired position. The Carrier asserts that it has a long held right to determine**

the qualifications for displacement. It cites the following Award (among others) in support of its position.

In Fourth Division Award 4093, the Board enunciates its position on this issue:

“... It is well established that Carrier has the right and sole discretion to make determinations with respect to qualifications; we will not disturb that determination unless it is clear, by convincing evidence, that Carrier’s decision was arbitrary or capricious. Furthermore, the burden of establishing the improper determination by Carrier falls on the Organization (see Awards 1372, 1940, 3728 and many others). In this dispute, Petitioner did not meet its burden of proof.”

After careful review of the record, the Board finds no evidence to show that the Carrier’s judgement in determining that the Claimants did not possess the fitness and ability needed to displace the junior employees was either arbitrary or unreasonable. Thus, the Board finds that the Carrier did not violate the Agreement.

### **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 28th day of March, 2000.