

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34065
Docket No. CL-34938
00-3-98-3-655**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-12153) that:

- (a) The Carrier violated the Amtrak Clerks’ Rules Agreement, particularly Rules 8, 10, and other rules when on February 17, 1997, Claimant Gamez’s displacement of junior employee Michael Phillips was disallowed by Mr. Harpold at Amtrak’s reproduction center. Mr. Phillips was working as a Duplicator Machine Operator making \$15.80/hr. With Saturday and Sunday as relief days.**
- (b) Claimant now be allowed \$120.64 per day for each and every day that position worked beginning on February 17, 1997, and continuing until this claim is settled. Claimant should be allowed \$15.80 at the punitive rate of time and one half for each and every hour Claimant would have been able to work overtime during the previous mention time frame; and finally Claimant should be placed in the above stated position on account of this violation.**
- (c) Claimant was in bump status, showed both fitness and ability to the job and should have been allowed to displace junior employee Mr. Phillips 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.

On February 17, 1997, the Claimant attempted to displace a junior employee assigned to the Carrier's reproduction (printing) center. On that same date the Claimant's displacement was disallowed by his Supervisor, following his completion of four "test" tasks assigned by that Supervisor. On March 18, 1997, the Organization filed a claim on the Claimant's behalf. That claim was denied and subsequently progressed, including conference on the property, after which time it remained unresolved.

It is the position of the Organization that the Claimant should have been allowed 30 days in which to prove himself qualified to hold the position at issue, as provided by the Rule 8 of the Agreement between the Parties. Rule 8 reads in pertinent part as follows:

- “(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.”

Specifically, the Organization maintains that the Carrier expected the Claimant to be fully qualified on the equipment used at the outset, rather than according him sufficient time to become fully qualified. The Organization contends that because the Claimant was familiar with printing processes, he certainly could have become fully qualified by the end of the required 30 days, if not sooner.

The Carrier asserts that it retains sole discretion in determining an employee's fitness and ability for various clerical positions. It also maintains that the Claimant was not considered as having the requisite fitness and ability to fulfill the functions of the position he sought. It points out that the Claimant himself demonstrated he could not work the printing equipment and failed to manifest sufficient knowledge of reprographics equipment to displace into the position at issue.

While the Carrier is correct that it generally maintains considerable discretion in determining employees' fitness and ability for jobs into which they may bid, such discretion is not untrammelled. The determination must meet reasonable standards and be administered consistently. In the instant case, the Claimant's statement of why he failed to complete the tasks assigned without incident is at considerable variance with the Carrier's view of the reasons for his problems. In its initial denial of the Organization's claim, the Carrier pointed out that the Claimant had destroyed several programs stored within the Xerox machine, that he had been unable to run envelopes on a machine that had already been set up for the task, and that he was unable to set up and run a two-color 9" x 12" envelope printing. The Carrier also noted that the Manager of the Reprographics Department had explained the complexity of the job to the Claimant prior to his attempt to displace. The Claimant said he had some reprographics experience and was thus allowed to attempt to displace into the position.

It is not unreasonable for the Carrier to have required the Claimant to be minimally competent on all the machinery he would be expected to use in the Reprographics Department. The initial denial letter from the Carrier states in thorough detail why the Claimant did not meet even the minimum qualification to displace into the position in question. No where on the record has the Organization put forth evidence

that the Claimant was more qualified than the Carrier adjudged him to be, or that the Carrier's standard in this instance was other than reasonable.

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 25th day of May, 2000.