

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34067
Docket No. CL-34966
00-3-98-3-657**

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-12155) that:

I. Claim (AM-964) on behalf of Clerk Marcus Commodore:

- (A) The Carrier violated the Amtrak Clerks’ Rules Agreement particularly Rules 8, 10 and other Rules when on February 12, 1997 it failed to allow Claimant Marcus Commodore to displace junior employee Queena Howard from her position of Accounting Clerk located at 400 N. Capitol Street, NW, Washington, DC.**
- (B) Claimant now be allowed eight hours pay at \$15.08 per hour for each and every work day starting on February 12, 1997 and continuing until this time claim is settled. Claimant should be allowed \$15.08 at the punitive rate of time and one half for each and every hour that Claimant would have been able to work overtime during the above stated time frame; and finally Claimant should be placed on the above mentioned position on account of this violation.**
- (C) Claimant was in bump status, has the fitness and ability to perform the job and should have been allotted thirty days in which to qualify as provided by the Agreement.**
- (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.

In February 1997, the Claimant attempted to exercise his seniority to displace Accounting Clerk Q. Howard in the Washington, D.C. office at 400 North Capitol Street. The Claimant attempted this displacement after his Accounting Clerk position in Washington had been abolished and his work was transferred to Amtrak's Philadelphia, Pennsylvania, Accounting Office on or about February 3, 1997. After declining the transfer to Philadelphia, the Claimant indicated his desire to bump and was interviewed for the position in question. Based on information obtained during an interview with the Claimant the Carrier determined that the Claimant did not possess the requisite fitness and ability to perform the duties of the position he sought. A claim dated March 11, 1997 made on behalf of the Claimant by the Organization was denied.

The Organization asserts that the Carrier violated Rules 8, 10 and other Rules when it failed to allow the Claimant to displace a junior employee from an Accounting Clerk position. The Organization further asserts that the Claimant was a qualified Accounting Clerk in displaced status who should have been allowed 30 days in which to qualify for the position. Additionally, the Organization contends that prior Awards support its position that the Carrier does not have the sole right to determine fitness and ability and that Rule 8 does not require a candidate to have full fitness and ability in order to displace into a position.

The pertinent Rule in dispute is as follows:

“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 Carrier asserts that it is Amtrak’s managerial function and exclusive prerogative to determine an employees’ fitness and ability for clerical positions. The Carrier further asserts that it did not violate Rule 8 or any other Rules of the Corporate Clerical Agreement. Additionally, the Carrier asserts that Rule 8 is not applicable until an employee is awarded a bulletined position or permitted to displace a position. The Carrier denials of this claim state that displacement was not allowed based on information obtained from the Claimant that he did not have the requisite fitness and ability to perform the duties of the position sought.

At issue in the case at hand is whether the Claimant possessed the basic knowledge to exercise displacement on the position in question. The Carrier asserts that the Claimant had some computer experience, but he had performed little or no work on computer systems and software programs. The Accounts Receivable Supervisor stated in a denial letter dated April 10, 1997, that the Claimant’s responses during his interview to sample questions relative to his qualifications and knowledge of various computer systems, and software programs, indicated he had no knowledge of the

computer systems and software programs “vital to the day to day operation of the Accounts Receivable section where he was attempted to displace.” The Carrier further concluded that he had no experience in other duties of the position including contacting banks, vendors and handling returned checks.

After careful review of the record, the Board does not find evidence to support the Organization’s position. It is a reasonable requirement that the Carrier be allowed to exercise its managerial function and prerogative to keep its day-to-day operations running smoothly. In a letter dated July 16, 1997, the Carrier stated: “The unrefuted facts are that the Claimant indicated he did not have certain essential skills required to work the position.” The Organization has not provided evidence that the Claimant possessed a working knowledge of or familiarity with the software programs used for operation of the Carrier’s Accounts Receivable section, nor has it provided evidence that the Carrier is obligated to institute a training program for the Claimant. The Board concurs with the findings of Public Law Board 4418, Award No. 5, which read in pertinent part:

“Rules 5 and 8, even if they should be read in harmony, are not obviously intended to visit such a burden on the Carrier. The decisions, discussed above, on which the Organization relies to support this claim, involved situations in which the rules could be harmonized to benefit an employee/applicant while not defeating the carrier’s ability to fulfill its mission. The Organization has not referred the Board to precedent in which those rules have been construed to compel a carrier to oust a competent but junior incumbent in order to accommodate a senior applicant who is presently unable to perform any meaningful aspect of the job but who could perhaps learn it in 30 days. The Organization bears the burden of proof that the Claimant was qualified in this context, and substantial deference is due the Carrier’s assessment of her necessary qualifications. Therefore, the absence of authority supporting the claim must defeat it.”

The Organization has not met its burden of proof. Accordingly, this claim is 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 25th day of May, 2000.