

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34072

Docket No. CL-35063

00-3-98-3-664

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 on the System Committee of the Organization (GL-12160) that:

This claim is filed in behalf of Claimant, Julia Vega.

(a) The Carrier violated the NRPC/TCU Northeast Corridor Clerical Agreement, in particular, the preamble Rules 1-B-1, 2-A-1, 2-A-5, 3C-1, when it arbitrarily and discriminably (*sic*) failed to permit Employee, J. Vega, Roster No. 849 to displace a Junior Employee, R. Benscoter, Roster No. 993 from Position CT100 Clerk Typist in Train Operations, 30th Street Station, Philadelphia, Pennsylvania on November 14, 1996. The position calls for 50 wpm typing is standard for which Claimant Vega tested for and achieved.

The Carrier disqualified Vega on November 15, 1996 her second day on the position. The letter of disqualification written by R. Robusto states that Vega did not have knowledge or familiarity with Microsoft and Arrow. This was an attempt by the Carrier to “build a fence” around the Claimant. The job advertisement does not require Arrow or Microsoft, and is not a part of a Clerk Typist position. Incumbent Benscoter did not have Microsoft when she gained access to Position CT100. Benscoter was trained on Microsoft on a one-day class at the request of R. Robusto. Ms. Vega was removed from the position only after incumbent Benscoter sought out Union Representative, Carmen Rossini, and broke down in tears stating that she did not want to lose her position. Further evidence of fence being built around incumbent Benscoter, is evidenced by the fact

that the job description was altered after Bencoter had obtained Position CT 100, in an effort to protect her from displacement.

Finally, General Manager Robusto signed a personal action request form dated 8/18/95 to compensate R. Bencoter under pay code BC 145 which is a Grade 9 rate as opposed to the proper BC Code of 129 which is a Grade 10 which is what CT100 was advertised at, and the Grade rate established for all Clerk Typist under attached "A" of September 1991 Agreement. The Carrier has discriminated against J. Vega, an employee who is of Hispanic descent (sic), is female and is a single parent, in an effort to protect Bencoter from displacement.

(b) That Claimant Vega now be reinstated to Position CT100 immediately, and that Claimant Vega be allowed sixteen (16) hours pay at the pro-rata rate of \$15.08 per hour, when she was held off Position CT100.

Additionally, claim is made for eight (8) hours pay for each and every day commencing November 16, 1996, and continuing each and every day thereafter until this claim is properly adjusted.

(c) This claim is filed in accordance with Rule 25, is in order 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.

This claim arose when the Claimant attempted to exercise her seniority right to displace a junior employee in the Clerk Typist, 4CT100 position on November 14, 1996. At the time she had no assigned position. By letter of November 15, 1996, the Claimant was notified that her attempt to displace into the position was not properly authorized, and she would have to displace into another position for which she held the threshold qualifications. A grievance was filed on the Claimant's behalf and was progressed in the usual manner, including conference on the property, after which it remained unresolved.

The Organization has made a persuasive case that the Claimant was not given sufficient opportunity to demonstrate her ability to perform the work at issue before being disqualified. Accordingly, the Claimant shall receive the difference between what she earned from November 16, 1996 forward and what she would have earned in the 4CT-100 position until and including the date of issuance of this Award. If the Claimant is qualified and still wishes to attempt to displace into the position at issue, she must do so within 30 days of the issuance of this Award.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of May, 2000.