

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35197
Docket No. CL-35602
00-3-99-3-525**

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-12411) that:

Claim of the System Committee of the TCU (NEC-1401) in behalf of Claimant Lydia Wilson:

- (a) The Carrier violated the Amtrak-Northeast Corridor Clerk’s Agreement particularly Article XI - Training of the 1991 Mediation Agreement; when it failed to allow Claimant to bump into the Baltimore Ticket office as a Ticket Clerk on April 4, 1996 after her position was abolished. The Carrier’s failure to provide training classes as provided by the Agreement directly led to the Claimant being denied her bump into the ticket office.**
- (b) The above Claimant now be allowed any monies she would have been entitled; if allowed to bump Job #4BAT-3 on April 4, 1996 and continuing each and every day until this claim is settled.**

This includes any and all money for hours she would have worked on other positions during the time frame outlined in this claim and monies for any overtime that was worked on position 4BAT-3 at the Ticket Clerk rate of \$15.46/hr on account of this violation.

- (c) The Carrier provide training classes for Ticket Clerks in the manner outlined in Article XI of the Agreement.**

- (d) This claim as 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.

The Claimant's position as a Baggage Foreman, 4BAF-2 at Penn Station, in Baltimore, Maryland, was abolished on February 22, 1996. The Claimant filed a displacement slip to exercise seniority to Ticket Clerk Position 4BAT-3, on February 23, 1996. Her request to displace onto the position was denied by the General Supervisor K. Wiedel on the grounds that the Claimant lacked the necessary qualifications for the Ticket Clerk position. On February 24, 1996, the Claimant displaced onto the position she currently holds of Baggage Foreman 4BAF-2.

On April 4, 1996, the Carrier allowed the Claimant to take a computerized test, (Scholar/Teach), which she did not pass. A claim was made on behalf of the Claimant by the Organization in a letter dated May 30, 1996, alleging that the Carrier had violated the Agreement. This claim was denied as were subsequent appeals.

Key to the Organization's position is their argument that the Agreement was violated when the Carrier failed to provide training classes as provided by the Agreement, which led to the Claimant being denied her displacement into the ticket office. The Organization contends that the September 6, 1991 Mediation Agreement Section (a.1.) is at issue in the instant case. In pertinent part:

“(A) Ticket Clerk Training

(1) Corporation Agreement

Prior to the awarding of a ticket clerk position to a junior unassigned employee trained after the date of this agreement, Amtrak will offer ticket clerk training to senior regular assigned employees at the location. Seniority will govern among applicants having sufficient fitness and ability . . . ”

The Organization asserts that employees covered by the Clerical Agreement are in line for promotion and that promotion, assignment, and displacement, are based upon seniority, fitness, and ability, per the Agreement. Further, the Organization contends that the Claimant need only to possess the potential to be trained so that she can successfully displace onto the position.

It is the Carrier’s position that the Claimant had no demand right to the position since she had never held a regular ARROW Ticket Clerk position, nor did she have even the threshold skills in Amtrak’s ARROW reservation and ticketing system. The Carrier also contends that the Claimant had never participated in training at any location for an ARROW Ticket Clerk position, even though many training sessions had been offered since 1991 when the Ticket Clerk Training was established. The Claimant had used Amtrak’s Scholar/Teach computer training program on her own to learn the ARROW skills, but she did not score a passing grade. Her failing grade demonstrated to the Carrier that she lacked the threshold fitness and ability to bump into the Ticket Clerk position. The Carrier contends that it has the right to test and retest employees to determine whether or not an employee is qualified for a particular position. Also, the Carrier contends that it is not obliged to train the Claimant until she is qualified for the position in question.

After a careful review of the record, the Board does not find evidence that the Carrier violated the Agreement nor does it find evidence that, contrary to the Carrier’s assessment, the Claimant possessed the fitness and ability to bump into a Ticket Clerk position. Numerous Awards support the position of the Carrier in the instant case, in acknowledging the Carrier’s right to set reasonable minimum standards of fitness and ability. In particular, Public Law Board No. 2296, Award 46, is on point. Its findings were, in pertinent part, as follows:

“The Baggage man position which Claimant held was abolished and he bid for a Ticket Clerk at Memphis, Tennessee. The bid was rejected on the ground that Claimant did not possess the fitness and ability to perform the minimum duties of the higher rated position.

* * *

The Organization, in matters such as these, and in absence of a rule allowing for an unjust treatment or hearing, bears a burden of showing the Board that the basic qualifications were with the Claimant. We do not see this showing.

Rule 5 gives the Carrier the right to judge fitness and ability so long as it is not ‘capricious, arbitrary and discriminatory.’ It was not.”

While the Organization has argued its point persuasively, the record contains no evidence indicating that the Claimant possessed the minimum fitness and ability for the Ticket Clerk position she was prohibited from displacing. Moreover, in failing in her later attempt to pass the computer test, the Claimant confirmed her lack of fitness for the position at issue.

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 20th day of December, 2000.