

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36896
Docket No. CL-37516
04-3-02-3-546

The Third Division consisted of the regular members and in addition Referee M. David Vaughn 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-12925)
that:

Carrier violated the TCU (off-corridor) Agreement when it failed to award G. Landis a computer tech position at the Philadelphia, PA Call Center.

Carrier shall now be required to allow G. Landis the right to work the job he correctly bid and to compensate him the difference in salary between his current position and the disputed position and any overtime worked in the disputed positions, until the Carrier corrects this situation.”

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 in this dispute was working in a Reservation Sales Agent position at the Philadelphia, Pennsylvania, Call Center, when the dispute arose. He is covered by the parties' Corporate Clerical Agreement.

In May 2000, the Carrier advertised a temporary position of Computer Technician I at the Philadelphia, Pennsylvania, Call Center. The advertisement included an extensive list of qualifying requirements and required a job interview. The Claimant submitted the only bid on the posted position on May 4, 2000. The posting was subsequently canceled and re-advertised on May 18, 2000. The Claimant and another employee submitted bids for the re-posted position. The Claimant was the senior applicant. Prior to awarding the position, both applicants for the position were subjected to a structured interview. They were asked the same questions during concerning the advertised job. Despite the Claimant's status as senior applicant, the position was awarded in June 2000 to a more junior applicant.¹

By letter dated July 3, 2000, the Organization protested that the Carrier violated the Agreement and past practice and precedent when it failed to award the Computer Technician I position to the Claimant. By letter dated September 6, 2000, the Carrier informed the Organization that the Claimant did not possess the required knowledge of computer software programs and understanding of the maintenance of computers used at the Call Center to perform the functions of the Computer Technician position. On the property, the Carrier stated that, based on the Claimant's responses during the structured interview and his lack of computer program knowledge, the Claimant was not considered qualified for the position.

The Organization filed this claim on behalf of the Claimant which was denied by the Carrier. It cited, in their entirety, Rule 6 (Bulletin and Assignment) and Rule

¹On or about September 14, 2000, a permanent Computer Technician I position was advertised. The Claimant and two other employees submitted bids for the position. The Claimant was the senior applicant. Again, prior to awarding the position all applicants went through a structured interview. The permanent position was awarded to the same junior employee who was previously awarded the temporary position.

8 (Failure to Qualify) in support of the claim. By letter dated September 14, 2001, the Division Chairman progressed the dispute to the Director, Labor Relations. The appeal was denied by the Carrier on December 3, 2001. The dispute was then referred to the Board.²

The Organization argues that the Carrier violated Rules 6 and 8 of the current Agreement when it failed to award the Claimant a Computer Technician I position. It contends that the Carrier has the contractual responsibility to allow the Claimant the right to work the Computer Technician I position because he correctly bid the position and he was the most senior applicant.

The Organization further contends that, while the Carrier has the right to determine, in a fair and impartial manner, the fitness and ability of employees under the provisions of Rule 1-B-1, it acted arbitrarily when it determined that the Claimant lacked sufficient fitness and ability for the position in question. The Organization argues that, under Rule 5, superior fitness and ability are not prerequisites for promotions as the Rule interprets "sufficient" as where two or more employees have "adequate fitness and ability." It contends that, while the Claimant was not fully qualified for the position (and admits as much), he had sufficient fitness and ability to be awarded the position.

The Organization further argues that, since the Claimant possessed sufficient fitness and ability to perform the position, Rule 8 requires that he be given 30 days to bring his skills to the point where he fully qualifies for the position. It maintains that the Carrier acted arbitrarily when it required the Claimant, in essence, to be fully qualified prior to being assigned the position. Since the Claimant was told that his test scores were equal to the more junior employee awarded the position, the Organization contends that the Claimant's fitness and ability were equal to the more junior employee.

Finally, the Organization argues that the Carrier cannot simply insinuate that an employee lacks adequate fitness and ability, but must present evidence to

²Further correspondence between the Organization and the Carrier ensued subsequent to the Director of Labor Relations' denial of December 3, 2001. The Carrier states, therefore, that the dispute has not been handled in accordance with Agreement requirements up to and including the highest Amtrak officer and that, this represents a fatal procedural defect to the claim.

justify its action of awarding a position to a junior employee. It contends that the Carrier's evidence must substantiate that its decision is based on solid grounds and not some irrational decision based on favoritism. The Organization urges that the claim be sustained.

The Carrier argues that the claimed violations of Rules 6 and 8 are without merit. It asserts that the Organization presented no proof that the Claimant was entitled to be awarded the Computer Technician I position over the better-qualified junior employee. The Carrier further contends that it has the right to determine an employee's fitness and ability for promotion to various clerical positions and may test them either verbally or in writing.

The Carrier further argues that pursuant to Rule 5, it determined that the Claimant was considered as not being qualified or having the requisite fitness and ability to fulfill the functions of the Computer Technician I position. It contends that the Claimant had very limited knowledge of the systems he would be responsible for maintaining and would have required extensive training to reach even the most basic level of competence. The Carrier argues that while the Claimant had the right to make application for the position and be interviewed, he did not have the right to be awarded the position and receive extensive on-the-job training. In addition, it contends that the junior employee awarded the position had the necessary educational and technical training for it.

The Carrier further argues that Rule 6 outlines the manner in which positions are advertised and awarded and that the position in question was properly advertised and awarded. It contends that, since the Claimant was not awarded the Computer Technician I position because he was not considered qualified, the 30-day provision under Rule 8 does not apply and thus could not have been violated.

The Carrier further argues that the Organization failed to meet its burden of proof in establishing a violation, and that the "mere assertions" it advanced are not proof. Citing authority, the Carrier contends that, because the Organization did not submit any proof that a violation occurred with respect to the claim, it must be dismissed.

The Carrier further argues that the Organization has not shown that the Claimant suffered any loss in compensation properly due him.

The Carrier's final argument is that the claim is procedurally defective because of the Claimant's belated correspondence which was furnished by the Organization but not handled and/or discussed on the property. It argues that the claim be dismissed without giving any standing to the merits of the case. The Carrier urges in the alternative that the claim be denied for lack of merit.

The Board is not persuaded that the claim on behalf of the Claimant is procedurally defective because the Organization submitted additional material - new information - after the Director of Labor Relations' denial of December 3, 2001, which was not handled and/or discussed on the property. The appropriate remedy in such a case is for the Board to ignore such additional correspondence and evidence which, it is noted, was at least in part accepted by the Carrier and made a part of the record. The additional material does not, in itself, represent a fatal procedural defect and the claim is not dismissed on procedural grounds.

The Board is persuaded that the claim on behalf of the Claimant must be denied. It was the burden of the Organization to establish that the Carrier's conduct was in violation of the Agreement. The evidence is insufficient to establish that the Carrier violated Rules 6 and 8 of the current Agreement when it failed to award the Claimant the Computer Technician I position. It is the Carrier's right to determine the qualifications, fitness and ability of applicants, subject only to a requirement that it not abuse its authority. Moreover, compliance with Rule 5 clearly requires that fitness and ability are prerequisites for the Carrier to permit seniority to prevail. While the Claimant was the most senior applicant, he was not sufficiently qualified, under Rule 5, so as to be awarded the position automatically, over a better-qualified junior employee.

The Claimant himself admitted, by letter dated October 23, 2000 to the Manager of Employee Services, that the Computer Technician I advertisement had an extensive list of qualifying requirements which included an interview. The interview tested his qualifications for the position as posted. The evidence is that the Carrier found him not to be qualified for the position on the basis of the interview.

Moreover, the Claimant admitted that he could not fulfill all of the qualifications for the position. In his letter dated October 23, 2001, to the Vice General Chairman, the Claimant admitted that the junior employee had previously worked for the Carrier at the Help Desk and was the incumbent in the temporary Computer Technician I position. The junior employee, therefore, had considerably more experience and possessed a better technical background. The Manager of Call Center Operations noted that the employee selected was "head and shoulders above" the other applicants, including the Claimant. He noted that the other applicants, including the Claimant, "while having some very limited knowledge of the systems they would be responsible for maintaining, clearly would have required extensive training to reach even the most basic level of competence." The Carrier's conclusion that the Claimant lacked adequate fitness and ability was reasonable, and not arbitrary, and it was not required to provide the Claimant 30 days in which to qualify.

The Organization failed to demonstrate through the timely submission of evidence that the Carrier violated any provision of the Agreement. Therefore, the Board must find in favor of the Carrier.

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 February 2004.