

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38218
Docket No. CL-38924
07-3-05-3-380

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 (NEC-2268) that:

1. The Carrier violated TCU/NRPC Agreement at 30th Street Station, Philadelphia, when it failed to qualify Claimant Judith VanSant as an Account Clerk-Refunds & Disbursements on December 6, 2001 in the Customer Refunds Office at 30th Street Station, Philadelphia when it used the results of a faulty and inaccurate testing device to disqualify Claimant.
2. The Carrier shall now repair or replace the computer based AAMPS testing device located in the 5th floor Finance Office at 30th Street Station, and re-test Claimant on a properly functioning testing system. Carrier shall remove this disqualification from Claimant's work record. Carrier shall also compensate Claimant the difference in pay between a Grade 8 position of the Account Clerk-Refunds & Disbursements, and whatever rate of pay she has earned since she was improperly disqualified. Carrier shall also remove the Disbursement duties from the job description of this position.”

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 was awarded bulletined position 10ACRD-7, Account Clerk - Refund & Disbursements, effective November 8, 2001. Se was disqualified on December 6, 2001, because she failed to pass the AAMPS Computer-based training module. A passing score was 80 and the Claimant achieved a score of 52.

Applicable to this dispute is Rule 2-A-5(b) which provides:

“When it is evident that an employee will not qualify for a position, after conference with the Local Chairman, he may be removed from the position before the expiration of thirty (30) calendar days and be permitted to exercise seniority under Rule 3-C-1. The Division Chairman will be notified in writing the reason for the disqualification.”

The correspondence exchanged on the property reveals that the primary dispute concerned the validity of the test. The Organization maintained that the testing machine malfunctioned during the test. The Carrier responded that the test administrator (1) observed that the Claimant was extremely nervous, (2) made herself available to assist the Claimant throughout the test, and (3) observed no problems with the testing system. In addition, the Claimant did not call the test administrator's attention to any problems. The Carrier further responded that the test had been in use for ten years and that 80 percent of the test takers passed.

The Board is confined to the record developed on the property. We are unable to take testimony to resolve factual disputes such as those presented in the instant case. Where such factual disputes exist in the record, the claim must fail for lack of proof.

Although the Statement of Claim itself appears confined to the alleged defects in the testing process and the correspondence exchanged on the property focused on the testing process, the Organization also asserted that the Carrier failed to hold a conference with the Claimant's representative and did not contact the Claimant's representative or allow him an opportunity to discuss the Claimant's disqualification. Before the Board, the Organization relies on Special Board of Adjustment No. 973, Awards 641, 642 and 663, and argues that the Claimant should receive another 30 days to qualify.

We reaffirm the holdings of the Awards of Special Board of Adjustment No. 973. Were the Organization's allegations proven, the Organization would be entitled to the relief that it seeks. Allegations, however, are no substitute for proof.

In the instant case the allegations that no conference with the Local Chairman was held and that no written notice was given to the Division Chairman were raised very late in the proceeding, after the appeal had been denied by the highest Carrier Officer designated to handle claims and after the claim had been conferenced. The allegations were not supported by any evidence, such as a written statement from the Local Chairman or from the Claimant. We further observe that, on its face, the disqualification letter shows a copy sent Certified Mail Return Receipt to "D. Ward - TCU Representative." Without proof to support the allegations that the Claimant's representative was not afforded an opportunity to discuss the disqualification, the claim must be denied.

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 June 2007.