

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39374
Docket No. CL-39607
08-3-NRAB-00003-060403
(06-3-403)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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-13151)
that:**

- (1) Carrier violated the Agreement specifically Rule 8, among other rules of the Agreement when by letter dated September 12, 2001, Claimant Patty E. Dunn was disqualified from the position of Statistical Clerk at Sanford, Florida.**
- (2) The Carrier shall now compensate Claimant an amount equal to what she would have earned, commencing on the date of her disqualification until such time she is reinstated to that position.**
- (3) Carrier shall at once remove the disqualification from Claimant's work record."**

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.

On July 20, 2001, the Claimant returned to work after being medically disqualified on September 8, 1999. She exercised her displacement rights to assume the position of Statistical Clerk at the Sanford, Florida, Station, a position previously held by Ms. T. Miller. Pursuant to Rule 8 of the Agreement, the Claimant was afforded 30 calendar days to qualify for her new position. Miller assisted the Claimant in her training. At the conclusion of the 30-day period, the Carrier determined that the Claimant did not possess the requisite skills for the Statistical Clerk position. Superintendent of Terminal Services M. R. Farr held a conference with TCU Vice General Chairman K. Teitrick and Amtrak Labor Relations Representative R. Meizinger to discuss the Claimant's failure to qualify for the position. It was agreed to extend the Claimant's qualification period by an additional 30 days. At the end of the 30-day period, the Claimant had not improved to the point of required proficiency and was disqualified on September 11, 2001.

The Organization contends that the Claimant is qualified for the position of Statistical Clerk. According to the Organization, the Claimant was "set up to fail." As a remedy, the Organization contends that the Carrier shall now compensate the Claimant an amount equal to what she would have earned, commencing on the date of her disqualification until such time that she is reinstated to that position. In addition, the Organization asks that the Carrier remove the disqualification from the Claimant's work record.

Conversely, the Carrier contends that the burden is on the Organization to prove that the Claimant was qualified for the Statistical Clerk position and was not given an opportunity to properly qualify. The Carrier contends that it went out of its way to assist the Claimant in qualifying for the position and that she was in no

way “set up to fail” as the Organization asserts. It is the Carrier’s position that the Claimant is not qualified for the position of Statistical Clerk, despite the Carrier’s numerous attempts to assist her in qualifying for that position.

After a review of the evidence and positions of the parties, the Board cannot find that the Organization has been able to meet its burden of proof. A review of the evidence shows that the Carrier did make reasonable attempts to assist the Claimant in qualifying for the position of Statistical Clerk. In addition, we do not agree that the Claimant was “set up to fail” as asserted by the Organization. Therefore, the claim is 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 8th day of December 2008.