Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40596
Docket No. MS-41027
10-3-NRAB-00003-090411

The Third Division consisted of the regular members and in addition Referee Martin W. Fingerhut when award was rendered.

PARTIES TO DISPUTE: (Melody A. Sears
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(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

"Claim of Claimant Melody Sears:

a) The Carrier acted in an arbitrary and capricious manner when it failed to find a Carrier Official guilty of allegedly making negative comments regarding Claimant made in presence of several others.

b) The Carrier allegedly retaliated against Claimant when she came forward to attest Carrier's declination of the Organization's grievance.

c) The Carrier allegedly denied Claimant the opportunity for advancement when it denied her the opportunity to interview for a position to train to become a locomotive engineer."

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 basic issue in this dispute is whether the Carrier improperly denied the Petitioner the opportunity to interview for a training position to become a Locomotive Engineer.

The facts showed that the Petitioner had been employed in various clerical positions since August 14, 2000. As such, she was represented for collective bargaining purposes by the Transportation Communication International Union (herein TCIU) and covered by the labor Agreement between the Carrier and TCIU. That Agreement covers the terms and conditions of clerical employees. There is no provision in the Agreement relating to employment rights for a Clerk desiring to become a Locomotive Engineer, including training positions for Locomotive Engineers.

Such a right does exist in the Collective Bargaining Agreement between the Carrier and the United Transportation Union (UTU). The UTU represents employees in the crafts of Trainmen, Yardmen, and Conductors. On May 1, 1988, the Carrier and the UTU entered into an Agreement which provided, in pertinent part, that:

> ". . . when selecting new applicants for engine service, opportunity shall first be given to employees in yard service on the basis of their relative seniority standing, fitness and other qualifications being equal. The Carrier shall post a notice when seeking new applicants."

In accordance with this Agreement, the Carrier posted a Notice on September 8, 2008, reciting, inter alia, that the Notice was directed to "All IHB Employees," that there were approximately eight Locomotive Engineer training slots open, and that:

> "The IHB must give trainmen who apply first consideration in accordance with the terms of the applicable collective bargaining agreement."

In response to the Notice, 16 Trainmen and ten employees from other crafts, including the Petitioner, submitted applications. On October 8, 2008, all non-Trainmen applicants, including the Petitioner, received identical letters which stated, in pertinent part:

> "Unfortunately, we could not consider you because we are required by agreement to give IHB trainmen first consideration for positions as engineer trainees. We are hiring another class of trainmen in early January, 2009. If you wish to be considered for a trainman's position we invite you to interview. . . . Individuals with trainman's seniority will be given first consideration for locomotive engineer trainee slots, and we anticipate another class of engineer trainees in 2009."

Three of the ten non-Trainmen applicants contacted the Carrier to indicate their desire to be interviewed for a Trainman's position. The Petitioner did not respond to the letter.

It is obvious from the above, that unless the Agreement between the Carrier and the UTU giving preference to Trainmen for Engineer training vacancies was unlawful, the Petitioner, as well as the other non-Trainmen applicants, was treated in an appropriate non-discriminatory manner. The Petitioner failed to provide any basis for finding that the Agreement was improper and unenforceable. Accordingly, the Petitioner's contention that her collective bargaining rights were violated is erroneous and her argument must be rejected.

The Petitioner also argued that she was not considered for the Engineer training position as retaliation by the Carrier because she had charged the Carrier with violating various statutory rights she possessed. The Carrier denied that it had engaged in any unlawful conduct. Based upon the evidence presented in this appellate forum, we are unable to make any findings in this regard. [1]

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[1] We note that the Petitioner filed charges with the Equal Employment Opportunity Commission alleging various violations of the law by the Carrier. On January 16, 2009 the EEOC closed its files with the comment that based:

> "Upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes."

What we can say with certainty, however, is that even if the Petitioner's allegations were proven, the Petitioner's treatment with respect to the denial of her application for the Engineer training program was not the result of any bias against her but, rather, entirely within the bounds of the applicable Collective Bargaining Agreements.

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 27th day of August 2010.