

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42071
Docket No. MS-42266
15-3-NRAB-00003-130263**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

**(Judy Jefferson
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Why was Tressie Bennett aloud (sic) to illegally bump me on the 6th day of her bump, rule 1b1d. Rule violated: 1B1D. On Friday, October 8, 2010, Tressie Bennett was released from her dispatcher position. On October 11, 2010 Tressie Bennett bumped me, Judy Jefferson at 9:20 am, but she was not fully qualified to have bumped me. She went to H/R to take the keystroke test after 3:00 pm on Monday, October 11, 2010. On October 14, 2010 Tressie Bennett bumped me again, which October 14, 2010 was the 6th day for bumping. If the first bump was legal, why did Tressie Bennett bump me again on October 14, 2010, which that is the same bump slip from the Friday, October 11, 2010, that I signed on October 14, 2010 and Chris Streeter also signed the displacement notice on October 14, 2010. Tressie Bennett last day as a dispatcher was October 8, 2010.

I am with the Mid Atlantic Division.

Attached are copies of: bump slip, a statement in reference being qualified with your keystrokes on file before bumping, and rule 1B1D.”

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 November 7, 2010, the Petitioner submitted a claim alleging that the Carrier violated Rule 1-B-1(d) of the Agreement when it permitted Tressie Bennett to displace her on October 14, 2010 from the Store Attendant position. The Petitioner maintains that the employee who displaced her was not qualified for the Store Attendant position when she was displaced from her Extra Crew Dispatcher position. Bennett did not have a qualified keystroke-typing test on file, but was allowed to take the test on October 11, 2010 after attempting to displace the Petitioner.

The Petitioner argues that Bennett was allowed to displace her on October 14, 2010, which was more than five days after her displacement from the Crew Dispatcher position on October 8, 2010. The Petitioner asserts that the October 14, 2010 Displacement Notice explicitly states that an employee who is displaced has five calendar days to exercise seniority to select another position. Furthermore, the Petitioner contends that someone other than Bennett gave her the displacement notice.

The Carrier asserts that there was no violation of the Agreement when the Petitioner was displaced. It argues that the keystroke-typing test on October 11 and the displacement on October 14, 2010 were done in accordance with Rule 3-C-1 (d).

The Carrier contends that the Organization requested that Bennett be permitted to take the typing test on October 11, 2010 so that she could exercise her seniority because she had been displaced. The Carrier contends that it exercised its prerogative, unfettered by the Agreement, to allow Bennett to take the test so that she could fulfill the requirement that a qualified test be on file. The Petitioner was held on her position until Bennett could demonstrate her ability to perform the job

selected as provided for by Rule 3-C-1 (d). Bennett was able to fulfill that requirement on October 14, 2010 after her October 12 and 13, 2010 rest days. It is undisputed in the record that an employee is not permitted to displace another employee while on a rest day.

The relevant contract language applicable to the dispute, in pertinent part, is as follows:

“Rule 1-B-1 - Qualifications For Bulletined Positions Or Vacancies

(d) Employees will be deemed to have sufficient fitness and ability for any position on which they were previously qualified, or that requires any skill prerequisite (e.g., key stroke, typing, steno) that the employee previously satisfied, provided he has worked a position requiring such skill or qualification within the last five (5) years.

Rule 3-C-1 - Reducing -Increasing Forces

(d) An employee will not be considered as having been displaced until the individual exercising seniority actually begins work on the position. If the Corporation requires a displaced employee to assist in the qualification of the senior employee who made the displacement, the five (5) calendar day period in Paragraph (c) of Rule 3-C-J will not commence until the displaced employee is released. The penalty will also apply in displacement situations when an employee is held on a position more than 30 days after the displacement.”

The Board finds that the Petitioner failed to satisfy her burden to prove that the Carrier violated the Agreement. Bennett displaced the Petitioner in accordance with Rules 1-B-1 and 3-C-1. Bennett was entitled to exercise her seniority after successfully fulfilling the keystroke typing test requirement. Nothing in the record cites a restriction on the procedure used to administer the test on October 11, 2010. Once Bennett was qualified and eligible to displace the Petitioner, she did so in accordance with Rule 3-C-1 on October 14, 2010.

Based on the foregoing, the Board finds that the record lacks the requisite substantial evidence that the Carrier violated the Agreement. Accordingly, 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 19th day of March 2015.