

PUBLIC LAW BOARD NO. 3545

Award No. 3

Case No. 9

PARTIES
TO
DISPUTE

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Seaboard System Railroad Company

STATEMENT
OF CLAIM

- "1. Carrier acted arbitrarily, capriciously and in a discriminatory manner when it failed to allow Clerk Natalie J. Hamilton to displace on the Clerk-Steno position held by Clerk Debbie Farrell.
2. Carrier shall place Clerk Hamilton on the Clerk-Steno position, and compensate her for any lost wages that accrued due to Carrier's position from the date of violation (January 27, 1983) until the violation is corrected."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This is a fitness and ability dispute in which claimant had been furloughed and, after being furloughed, requested that she be given the test for Clerk-Stenographer. On January 19, 1983, Clerk Hamilton was given a typing and shorthand test and she did not meet the minimum requirements for either typing or shorthand. She was advised that she had not passed the test. Subsequently, after practicing for several days on the typewriter in the Personnel Department, claimant was again given the typing and shorthand test on January 24, 1983. In the course of the administration of the tests claimant became upset and was allowed to take the typing test a second time on that date. With the second trial on January 24, claimant achieved a minimum level of 70.68 words per minutes on the typing test, which was sufficient. She did not pass the shorthand test. In the shorthand test, she was required to have a minimum speed of 80 words per minute and to produce four syllable letters. Her shorthand speed was 50 words per

minute and with one mailable letter.

Subsequent to the testing process, claimant submitted a written displacement notice and thereafter requested an Unjust Treatment Investigation. She had been advised that due to the tests she would not be allowed to displace as a Clerk-Typist in the position to which she aspired. The Unjust Treatment Investigation was held on February 15, 1983, and subsequently she was informed that there was no basis for changing Carrier's determination and there was no evidence that she had been treated unjustly when she was not permitted to displace on the Clerk-Steno position.

Rule 7 of the Schedule Rules provides as follows:

"Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

The word 'sufficient' is intended to more clearly establish the right of the senior employee to a position where two or more employees have adequate fitness and ability."

Petitioner takes the position that due to the claimant's emotional state and various interruptions on the second testing day, she failed the dictation test. Further, the Organization argues that she could easily have attained the minimum established by Carrier within the thirty-day trial period provided for in the rules. The Organization therefore concludes that claimant should have been allowed the thirty-working days within which to qualify for the position. Furthermore, it is apparent from the record, according to the Organization, that claimant had previously occupied a Clerk-Steno position. The Organization concludes that the evidence indicated at the hearing specified that the sole reason for denying claimant the position was based on a test which had been administered under adverse conditions. Furthermore, since she had previously held the position in question, she was within her rights to insist on the thirty-working days within which to qualify.

Carrier takes the position that claimant did not possess the basic entry level skills which were required for the position in question. All of the Steno-Clerks in the Department to which the claimant wished to be assigned had taken and passed the typing and dictation tests given by the Personnel Department before they were assigned to the Department. Carrier notes that when claimant was given the two tests on January 19, she passed neither one. Her typing speed was 63.48 words per minute and her shorthand speed was approximately 60 words per minute. The minimums were 70 words per minutes in typing and 80 words per minute in shorthand. Carrier also indicates that the evidence is clear that on January 24 she was given the tests twice and on the second typing test she passed with a minimum score. She did not pass the shorthand test that day either. Her shorthand on the second day was the same as the first day, approximately 60 words per minute, with only one letter considered to be mailable (the standard was four). Carrier insists that it was a managerial decision that she did not possess the necessary fitness and ability to qualify within the thirty days allowed under the agreement for the position in question.

It has long been held that in fitness and ability cases Carrier has the right to make the determination. Carrier's decision can be overturned if two things are established: first, if the evidence indicates that Carrier's conclusions with respect to the ability of the employee were based on arbitrary or capricious reasoning. Furthermore, the employee has the burden of establishing that the necessary qualifications had been achieved and that proof must be specific. In short, Petitioner must prove that the employee in question has the requisite fitness and ability on a current basis and not on a presumptive future basis. Unless this evidence is established, Boards such as this may not overturn Carrier's decision with respect to fitness and ability. Among the many awards on this subject relevant to this particular dispute, see Third Division Awards 21421, 21931 and Award No. 1 of Public Law Board No. 1894.


In the dispute before this Board, there is no evidence that claimant

had the necessary entry level skills to conform to the requirements of Rule 7. Thus, based on the testing which she had been given, she did not have the sufficient fitness and ability for her seniority to be effective. There was no evidence that she had the skills and there was no evidence that Carrier's conclusions with respect to claimant were arbitrary or capricious or that she had been treated unfairly in the assessment of her skills. For the reasons indicated therefore the claim must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


J. F. Williams, Carrier Member


L. E. Bosher, Employee Member

Jacksonville, Florida

~~November~~, 1984

December 28, 1984