

BEFORE
PUBLIC LAW BOARD NO. 119

Award No. 5
(Case No. 6)

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

and

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

STATEMENT OF CLAIM:

(1) Carrier violated the provisions of the effective Clerks' Agreement when it arbitrarily and capriciously disqualified Miss Margaret Menter from the position of Commodity, Payroll, Freight Accounts and Typist after April 1, 1966.

(2) Carrier shall now be required to compensate Miss Margaret Menter for all earnings lost as a result of being denied the right to fill her regular assigned position of Commodity, Payroll, Freight Accounts and Typist, commencing Saturday, April 2, 1966 and continuing each and every day thereafter that she is denied the right to work said position.

JURISDICTION:

The jurisdiction of this Board is set forth in its Award No. 1. The statement of jurisdiction therein is incorporated herein by reference thereto.

OPINION OF BOARD:

Claimant was the occupant of a position titled Typist-Dictaphone Operator located in the Auditor's Office, Lang, Ohio. By Bulletin No. 157, dated February 11, 1966, Carrier abolished the position "account Duties no longer existing;" and, it stated in the Bulletin that "The remaining duties /of the position/ consisting of Typing of vouchers, abstracts, pay checks, commodity reports, correspondence and claims. Will be assigned to position of Commodity Payroll and Freight Accounts." On the same day Carrier, by Bulletin No. 158, advertised for application or bids a position titled Commodity, Payroll, Freight Accounts and Typist in the Auditor's Office, Lang, Ohio, herein called the Commodity position. Claimant filed bid for the Commodity position. She was awarded the position on February 21, 1966.

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Carrier, on March 24, 1966, wrote to the Local Chairman:

"On February 21, 1966, Miss Margaret Menter /Claimant/ was assigned to position 'Commodity, Payroll, Freight Accounts and Typist' in accordance with my Bulletin 158-A.

"While some progress is evident, the indications are that at the present rate of improvement, this employee cannot qualify within the thirty (30) day period provided for in the Agreement.

"We would certainly appreciate any assistance that you may give to impress this employee with the need of putting forth greater effort in order that she may qualify under the terms of the Agreement."

On March 31, 1966, Carrier by letter, informed Claimant:

"This is to advise you that evidence of record definitely indicates your inability to perform the assigned duties of the position 'Commodity, Payroll, Freight Accounts and Typist.' and on this basis, it is necessary to disqualify you after April 1, 1966."

Clerks considered that Carrier unjustly treated Claimant in its judgment that she was not qualified. Upon request of Clerks, pursuant to Rule 26 of the Agreement, a hearing was held on this charge. Thereafter, under date of May 3, 1966, Carrier, by Auditor Geary, wrote to the Local Chairman:

"After reviewing the testimony as recorded, I find the disqualification is supported and any request to reinstate Miss Menter back on the job is declined."

I. THE ISSUE

The issue framed by the Claim before us is whether Carrier "arbitrarily and capriciously disqualified" Claimant.

II. PERTINENT RULES

Rules 9 and 17 of the Agreement are pertinent. See our Award Nos. 2 and 4 for our interpretation and application of these Rules.

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III. RESOLUTION

We have held: (1) under Rule 9 Carrier is contractually obligated to award a position to the senior bidder having reasonable fitness and ability as defined in the Rule; and (2) under Rule 17 the employee awarded the position has thirty days in which to qualify or a lesser period if "it is definitely determined" that the "employee cannot qualify."

It is not disputed that in the instant case Claimant was on the position for thirty days before Carrier judged her to be not qualified to perform the duties of the position. It is not alleged that during that period she did not have "proper supervision and direction."

The thrust of Clerks' case is that the consolidation of the remaining duties of the abolished position of Typist-Dictaphone Operator with those of the Commodity position and a backlog of work on the Commodity position placed an onerous burden on Claimant which adversely affected her opportunity to qualify for the Commodity position; and (2) there was a clash between Claimant and her supervisor on the Commodity position which prejudiced Carrier's judgment as to Claimant's qualifications.

As to the combining of duties on the Commodity position, Claimant was on notice as to this before she bid on the Commodity position; and, Clerks made no protest to the bulletined duties of the Commodity position. Therefore, Claimant had to qualify to perform the bulletined duties within the time prescribed by agreement of the parties in Rule 17. That she may have demonstrated a potential that if given more time she could have qualified to perform the duties of the position is of no consequence. The parties are bound by the terms of their agreement. This Board has no power to vary those terms.

As to the alleged clash, we find no evidence in the record to support a finding that, if it did in fact exist, it colored Carrier's judgment of Claimant's qualifications. At the hearing Carrier adduced evidence that its judgment was predicated on both quality and quantity of work performed. These are coexisting and coextensive factors of fitness and ability to perform the duties of a position. If an employee fails to satisfy both factors, contemporaneously, he is not qualified to perform the duties of the position as a whole.

In our Award No. 2 we held that Rule 9 inhibits what otherwise would be an uninhibited management prerogative to judge fitness and ability in the first instance subject to reversal only upon a finding that the

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judgment was arbitrary, capricious or discriminatory. But, ✓ we hold that when the Carrier complies with Rule 9 and the employe is given the opportunity to learn and perform the duties of the position, within the time limitations prescribed in Rule 17, then Carrier has the right to judge fitness and ability only subject to reversal by proof that it acted arbitrarily, capriciously or discriminatorily. Indeed, Clerks recognize this in its Claim wherein it alleges that Carrier "arbitrarily and capriciously disqualified" Claimant. Clerks had the burden of proving the allegation by a preponderance of evidence of probative value. In this record Clerks did not satisfied the burden. This Board, in the posture of the record, has no power to substitute its judgment for that of Carrier. We, therefore, are compelled to deny the Claim. ✓

FINDINGS:

Public Law Board No. 119, upon the whole record and all the evidence, finds and holds:

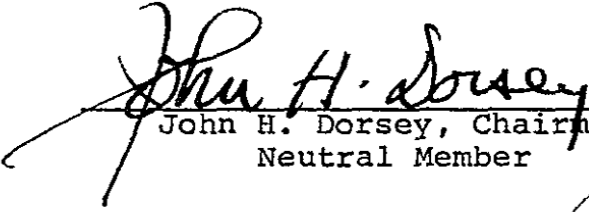
1. That Carrier and Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That this Board has jurisdiction over the dispute involved herein; and,
3. That Carrier did not violate the Agreement.

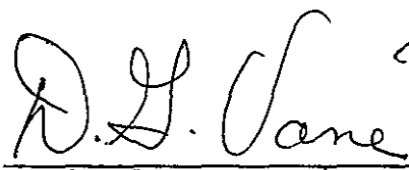
AWARD

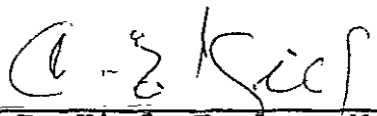
Claim denied.

ORDER

It is hereby ordered that the effective date of the Award, supra, for application of Section 3, First (q) (r) and Section 3, Second, of the Railway Labor Act, as amended, shall be the date, shown below, on which the Award issued.


John H. Dorsey, Chairman
Neutral Member


D. G. Vane, Carrier Member


C. E. Kief, Employe Member

Dated at Chicago, Illinois, this 27th day of February, 1968.