

PUBLIC LAW BOARD NO. 2971

Award No. 18

Case No. 11

PARTIES
TO
DISPUTE

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Southern Railway Company

STATEMENT
OF CLAIM

"Carrier violated the agreement at Charlotte, North Carolina, on May 10, 1978, when it called and used a Line of Road, E-6 Extra Board Employee to fill a position covered by the yard, E-5 Extra Board.

For this violation, the Carrier shall now compensate Ms. L. Settle, Extra Yard Clerk, Charlotte, North Carolina, a day's pay, eight (8) hours, at the straight-time rate for May 10, 1978."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein 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.

On May 10, 1978, claimant had a regular assignment on the Yard Clerk's Extra Board on Carrier's Piedmont Division, Charlotte Seniority District. On May 10, 1978, a vacancy occurred in the office of the Superintendent of Terminals at Charlotte and claimant was first out on the Extra Yard Board, but she was not called to fill the vacancy resulting in the claim herein.

As an initial argument, Petitioner notes that the claim was originally filed with the Agent Terminal Control who was the Carrier officer authorized to receive claims and grievances. However, it is noted that this officer did not decline the claim himself and, hence, the Organization insists that the provisions of the rule were not met and the claim should be payable. Carrier disagrees. Carrier notes that the rule is specific with respect to who is authorized to

receive claims from the Organization but does not specify who must respond. Specifically the pertinent part of the rule reads as follows:

"Should any claim or grievance be disallowed, the Carrier shall, within sixty days from the date same is filed, notify whoever filed the claim or grievance"

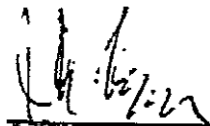
Thus, Carrier argues that claimant filed the claim with the appropriate officer authorized to receive it and the response was well within the sixty-day time limit by Carrier. The Board notes that there is no basis as the rule reads for petitioner's contention. Even though the same individual who received the claim did not respond to the claim, there was no mandate in the rules that such action was required. Therefore, this procedural argument must be rejected.

With respect to the merits, the Organization insists that the position in question must be relieved by employees assigned to the Yard Extra Board on which claimant appeared. The Organization insists that claimant was qualified to fill all the duties required in the position and should have been called to fill that position, but another employee from a different Extra Board was called and used instead. Thus, according to the petitioner, Carrier's failure to use the claimant constituted a violation of the agreement. Carrier's position, on the contrary, was based on a very simple fact: the claimant was not qualified to fill a position of clerk-stenographer, according to Carrier, since she could not take shorthand which was the basic requirement of that position. Carrier also notes that claimant had not "cubbed" for the particular job.

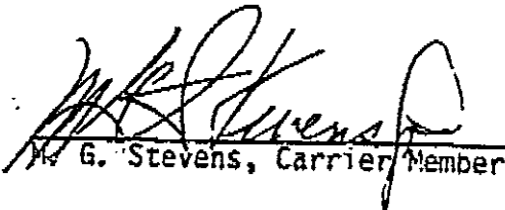
It is clear from the record and also based on past history that the rules pertaining to assignment of employees to positions are always predicated on the employee being qualified to do the work involved. In this instance, since claimant obviously could not perform an essential aspect of the particular position, there could have been no violation of the rule by Carrier's refusal to select her from her position on the Extra Board. For that reason the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



M. G. Stevens, Carrier Member



E. J. Neal Employee Member

Atlanta, Georgia
February 14, 1985