



Award No. 15493
Docket No. CL-15644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5789) that:

(1) The Carrier violated the current rules and working Agreement particularly Rules 4, 8, 10 and 13 at Proctor, Minnesota, when on May 18, 1964, it failed to allow Mr. David Stenstrom to exercise his seniority rights and displace junior employe, Floyd L. Ostman, from the position of Clerk-Janitor.

(2) Mr. David Stenstrom is to be assigned to the position of Clerk-Janitor in the Mechanical Department at Proctor and be compensated for all monetary loss sustained each day a junior employe occupies such position, beginning May 18, 1964, and continuing until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains clerical positions in its Mechanical Department at Proctor, Minnesota, in Seniority District No. 3, as shown in Rule 4 of the effective Clerical Agreement.

The position of Clerk-Janitor in the Mechanical Department was established by bulletin issued by the Chief Mechanical Officer on November 16, 1962 (Employe's Exhibit A). Subsequent bulletins have been issued containing the same information as that in the Chief Mechanical Officer's bulletin of November 16, 1962.

Claimant acquired and maintains a seniority dating in Seniority District No. 3 of November 8, 1957. Claimant became furloughed from Seniority District No. 3 and was employed on April 30, 1964, on a clerical position in Seniority District No. 2. Claimant continued working in Seniority District No. 2 until displaced commencing May 18, 1964, from the Seniority District No. 2 position. Upon being displaced, Claimant attempted to return to employment in Seniority District No. 3 by advising the proper officer of the Carrier, under provisions of Rule 13, that it was his desire to displace Mr. Floyd L. Ostman, the incumbent to the Clerk-Janitor position in the Mechanical Department, with a seniority dating June 18, 1963.

when taking the test, and in order to be fair, the Carrier retested the claimant on May 22, 1964. In this 5-minute test he typed 25 words per minute with 17 errors.

Again Mr. Stenstrom made complaint, and again the Carrier afforded him the opportunity of passing the typing test, this time given by the staff assistant to the Chief Mechanical Officer. Again claimant failed to meet the minimum test requirement, taking 55 minutes to type a straight copy letter. In this test he typed 10 words per minute with 20 errors. (Copies of the tests taken by the claimant are attached hereto and marked as Carrier's Exhibit A.)

Claimant was not allowed to displace a junior employe in the Mechanical Department because of his inadequacy as a typist, which was one of the job requirements.

The position which the claimant sought to displace to has at least an average of one hour and fifteen minutes of typing to be performed per day. This average daily typing is based on the typing performance of a typist having the minimum typing qualifications.

Claimant, not being qualified to type at the minimum rate of speed, would take at least twice as long to perform the typing duties attached to the clerk-janitor position. It would follow that, because of the deficiency, he could not perform all the required duties of the clerk-janitor position within the normal regular tour of duty.

Copies of the correspondence involved in the handling of the dispute on the property are attached and marked as Carrier's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, through the Organization, alleges that Carrier violated the Agreement when it refused to allow him to exercise his seniority rights and displace a junior employe from the position of Clerk-Janitor.

A requisite of that position was an ability to type, and Carrier required all applicants to pass a typing test. The record shows that Claimant was afforded ample opportunity to pass the typing test, but failed each time it was taken (three times).

As this Board stated in Award 15002:

"It is clear that Carrier has the right to administer tests to determine whether or not an employe is qualified for a position.

It is equally clear that such tests must be such to allow reasonable men to conclude that the results are sufficient indication or proof of qualification or disqualification."

Applying these standards to the facts in the instant dispute, we find that the Agreement was not violated. Awards 14288, 12994.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 18th day of April 1967.