

Award No. 18353
Docket No. CL-18581

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6684) that:

(a) Carrier violated the Clerks' Agreement at Memphis, Tennessee, when on June 25, 1968 it refused to allow Clerk Mrs. Offie Schmitz to exercise displacement rights on Position No. 392, Industry Service Center, due to alleged lack of qualifications.

(b) Clerk Mr. O. Schmitz shall now be compensated \$27.07 per day for June 25, 1968, and each subsequent work day.

(c) Compensation shall be pro rated for the purpose of Railroad Retirement taxation on monthly basis to insure proper Railroad Retirement credits.

EMPLOYEES' STATEMENT OF FACTS: On June 14, 1968 claimant addressed a letter to Mr. V. L. Agy, Chief Yard Clerk and Mr. J. W. Harrell, Director of Industry Service, Memphis, Tennessee, requesting that she be allowed to exercise her seniority rights to Position No. 392, Industry Service Clerk, Memphis, Tennessee, held by Mr. J. L. Browning. Employees' Exhibit No. 1-A. Following a conference between the claimant, Mr. E. O. Mossberger, Mr. C. O. Gross, Managers of Terminal Procedures and Mr. J. W. Harrell, it was agreed to allow claimant to work Position No. 392 on June 17, 1968 in an effort to determine her qualifications. On June 17, 1968, Mr. Harrell addressed a letter to claimant outlining the procedures that had already taken place and listing the alleged errors made by Claimant during that day, which indicated to him that Claimant was not qualified. Further in this letter Mr. Harrell, at Claimant's request, allowed Claimant to break-in four more days on Position No. 392 with her next trial period being June 24, 1968. Employees' Exhibit No. 1-B.

On June 24, 1968 Local Chairman Parker addressed a letter to Mr. J. W. Harrell taking exception to the negative approach in Mr. Harrell's letter of June 17, 1968. Local Chairman Parker also explained the alleged errors charged against Claimant June 17, 1968. Employees' Exhibit No. 1-C.

E. O. Mossberger, all officers of the company. At the end of the day Mrs. Schmitz was appraised in conference of her performance of the required work. It was concluded that Mrs. Schmitz was not then qualified to assume the responsibilities of position No. 392, Industry Service Clerk; however, she was allowed one week in which to further prepare herself for review on June 24, 1968.

When Mrs. Schmitz was again allowed to fill position No. 392 on June 24, for the purposes of review, Company officers found her ability to perform the tasks of Industry Service Clerk insufficient to continue and she was disqualified.

OPINION OF BOARD: In January, 1968, Carrier established an Industry Service Center at Johnston Yard, Memphis, Tennessee, to provide single telephone call service for its industry shippers seeking information or making requests. It is a sensitive function in the relationship between Carrier and its patrons.

On February 3, 1968, Claimant displaced an employe in Position No. 365, Industry Service Clerk, in the Center. She was disqualified on February 22, 1968, whereupon she took approved leave of absence for a period terminating June 23, 1968. The disqualification was not disputed.

On May 27, 1968, Claimant appeared at the Center and verbally informed the Chief Yard Clerk that she desired to qualify for and displace on Industry Service Clerk Position No. 392, the duties of which were like those of Position No. 365.

It is stated that Claimant broke-in on the duties of Position No. 392, on her own time, in the period May 27 to June 9, 1968. There is no evidence that Claimant did in fact perform any of the duties of the Position during that period — at most, she observed the performance of duties by the occupant.

Under date of June 14, 1968, Claimant served the following on the Chief Yard Clerk:

“This is to advise that I wish to displace J. L. Browning off position No. 392, effective 8:00 A. M., June 17, 1968.

I was disqualified from Industry Service Clerk's position No. 365 on Thursday, February 22, 1968, but have been breaking in, in the Industry Service Center for the past three weeks. I believe that I can handle the position now, and I would appreciate a chance to prove it. (Emphasis ours.)

If there is any discussion, please contact me.”

She was not permitted to displace; but, it was agreed that she would be permitted to perform the duties of the Position on June 17, under observation, to demonstrate her ability. Upon completion of that day's work Carrier in the exercise of its judgment held she was not qualified. Carrier in conference with Claimant and her representative detailed the areas in which she was found wanting. Then, at the request of Claimant and her representative, Carrier agreed to allow her an additional four days to break-in with her next trial period to begin June 24, 1968.

On June 24, 1968, after having been observed in her performance of the work of the Position on that day, Carrier again held Claimant not qualified; and, Carrier again, in conference with Claimant and her representative detailed the areas in which it found Claimant wanting.

Under date of August 6, 1968, Petitioner's Local Chairman filed claim that Carrier:

" . . . arbitrarily, capriciously, and unreasonably refused to render Mrs. Schmitz qualified as Industry Service Clerk, and with manifest intent to circumvent the Agreement solicited complaint from the shippers she dealt with, in order to manufacture evidence to support their biased, prejudiced, and unjust decision."

A substantial part of Petitioner's argument is addressed to unjust treatment. As to it, Petitioner failed to employ the singular contractual procedures for raising such an issue as prescribed in Rule 22. Inasmuch as the allegation of unjust treatment was not handled in the usual manner on the property the Board is without jurisdiction to entertain it.

The issue properly before us is whether Claimant was wrongfully deprived of a contractual right to displace on Position No. 392.

In the resolution of the issue the following contractual provisions, with emphasis supplied, are pertinent:

"RULE 6. PROMOTION

(a) 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.

(b) The word 'sufficient' is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability."

"RULE 7.

FAILURE TO QUALIFY

(a) Employees awarded or displacing on regular positions in accordance with Rule 6 and failing to qualify within thirty working days shall retain their seniority rights and may perform extra work and bid on any bulletined position but may not displace any regularly assigned employe.

(b) Employees awarded or displacing on regular positions will be given full cooperation by supervisors and other employes in their efforts to qualify.

(c) Employees failing to qualify within thirty working days may, if they so desire, handle under Rule 22 within twenty days of removal."

Under Rule 6 the initial exercise of judgment and determination as to an employe's qualification to perform the duties of a position are reserved to Carrier. The preponderant weight of authority found in our Awards is that the Board will not set aside a carrier's determination in the absence of a factual showing that Carrier's conclusion was unreasonable, arbitrary or capricious. The burden of proving existence of such reversible error(s) is borne by the challenger.

We are persuaded from the material and relevant evidence, in the record made on the property, the Carrier's holding that Claimant was not qualified to perform the duties of Position No. 392 was reasonably supported by fact and consequently not arbitrary or capricious.

Rule 7 pertains only after an employe has been awarded or displaced another employe on a regular position "in accordance with Rule 6." Since Claimant herein was not in such status, relative to Position No. 392, the provisions of Rule 7 are inapplicable.

For the foregoing reasons we will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December 1970.