

# The burden of proof

[Business](#), [Management](#)



## The burden of proof

1. Which party has the burden of proof? Which level of proof will be used?

Why?

The company should prove that Ms. Boone is not qualified for the job. The proof that they will use is the failure of Ms. Boone to pass the Work Keys Assessment which is a requirement to be accepted in the position she is applying for. They also have to prove that Ms. Boone should not be given the 30-day training because the training is to be given only to those who qualified for the job. The Company should also prove that the Union as early as 2002, is already aware that the Work Keys Assessment is given to entry level jobs in the Technical Department. Work Keys has been utilized in the plant for nearly four years.

2. Evaluate the Union's past practice argument.

The Union's past practice argument cannot hold because the assessment test has already been given to previous applicants in the Technical Department. The Union claimed that the company awarded the job to senior bidders in the past. However, the Union did not take into consideration that seniority was not the only requirement, passing the assessment test was a minimum qualification for the position being bided for.

3. Does it matter which type of assessment is used by the Company?

Yes, the type of assessment used by the Company matters because it will determine if a certain applicant is qualified to do the job or not. The type of assessment should be able to measure the capabilities of the applicant which are necessary in accomplishing a certain job.

4. If the Union alleged that the Work Keys Assessment was not valid, which

party would

have to prove the validity?

The validity of the Work Keys Assessment should be proven by the company through the Subject Matter Experts (SMEs) who designed it and approved its use. The SMEs have been with the company for an average of more than 17 years. As stated by the company, “ Who better to determine the tasks and skills required for an entry-level position than those who have performed it?”

The SMEs are in a position to state that those who pass the test have the necessary skill levels for entry and effective performance in the extra hand position.

5. You are the arbitrator. What is your decision? Why?

If I were the arbitrator of the case, my decision is that Ms. Boone is not qualified for the extra hand job opening posted in July 26, 2004. A proof of this is her failure to pass the Work Keys Assessment, which was a prerequisite in getting the job. She is not entitled to the 30-day training that the Union was insisting, because she has to be qualified first for the job before she can be trained. If the Union is questioning why she was given the assessment test, I think that the complaint should have been done prior to Ms. Boone’s taking of the test and not after she failed the test. Furthermore, the Work Keys Assessment has already been taken in 2003 by two applicants to the Technical Department. One was taken by an external applicant and the other by a transfer bidder. At that time, the Union did not question the taking of the test, maybe because the two applicants passed it. Therefore, the Union cannot question now the giving of the test to Ms. Boone.

It should be noted too that seniority should not be the only deciding factor in

accepting an applicant for a job. Job qualifications and skills are major factors in the decision process in allowing a job transfer. As explained by Saiyadain, a transfer policy of a company should be on the basis of seniority and merit tests, especially if it is a production job or it should be on the basis of seniority alone, assuming the employee has the minimum ability to handle the job (Saiyadain, 2009).

#### Reference

Saiyadain, M. (2009). Human resources management (4th ed.). West Patal Nagar, New Delhi: Tata McGraw-Hill Publishing Company Limited.