

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated Rule 13 of our Current Agreement in particular 13(d), (f) and (g) when they failed to award job to senior qualified employee at Superior, Wisconsin.
2. That, accordingly, the Burlington Northern, Inc. be ordered to award Bulletin #154 to Steve Plasch and compensate him for all overtime he would have received. Further, that Mr. Plasch be compensated \$3.00 per day for every work day he was not transferred to Bulletin #154.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On October 9, 1980, Carrier posted Bulletin No. 154 advertising a vacancy in one (1) Cline Groundman position. Claimant bid for that position. By letter dated October 16, 1980, the General Foreman Cars wrote to the Claimant as follows:

"Your bid on bulletining #154 dated 10-9-80 for Cline groundman is hereby declined account agreement between Carmen's Organization and Burlington Northern concerning letter dated December 29, 1976. This letter stated that you will only be allowed to work in the Shop area on days or afternoons, whatever your seniority will allow you to hold."

This position was awarded to a carman junior in seniority to the Claimant.

Employees contend that the Carrier arbitrarily disqualified the Claimant in violation of Rule 13(d), and 13(g).

Rule 13(d) states that "positions or vacancies bulletined pursuant to paragraph (b) hereof will be awarded to the senior qualified applicant within fifteen (15) calendar days after the bulletin period expires. Rule 13(g) reads as follows:

"(g) Employees will be given cooperation by the Carrier in qualifying for positions secured in the exercise of seniority ... In event such employee is not disqualified within thirty (30) days because of incompetency, he shall be considered qualified for such position."

The issue here is whether or not the Claimant was qualified for the advertised position and whether or not the Carrier was obligated to allow him thirty (30) days to qualify.

The undisputed facts are that in June 1976, Claimant went on a leave of absence because of illness. Before the Claimant requested to return to work, seven carmen with whom he previously worked, sent a memorandum to the General Foreman stating that "We the car inspectors of the 17th Street yards on 4 to 12 P.M. will not work with Steve Plasch because he is unsafe to work with".

In a letter to the Claimant dated December 9, 1976, the Superintendent wrote Mr. Plasch to return to service at 7:30 A.M. on Monday, January 3, 1977. The second paragraph of that letter reads as follows:

"It has been discussed with Local Chairman for the Carmen's Organization that you will only be allowed to work in the shop area on days or afternoons whatever your seniority will allow you to hold."

This was agreed to in writing by Local Chairman C. Swanson.

On January 3, 1977, Local Chairman Swanson wrote to General Chairman N. G. Robinson as follows:

"This is to advise that Carman Stephen D. Plasch returned to work at Superior this AM, January 3, 1977, with the stipulation that he work in the shop area where he would work under direct supervision of an exempt employee.

I agreed with this arrangement and Stephen Plasch accepted this without any comments or arguments.

With best wishes and kind personal regards, I remain
(Emphasis added)."

Mr. Robinson replied to Mr. Swanson's letter on January 11, 1977, in which he said:

"This will serve to acknowledge your letter of January 3 advising that Carman Stephen D. Plasch, Superior, Wisconsin, returned to work on January 3, 1977 with the stipulation that he would work in the shop area where he would work under the direct supervision of an exempt employee."

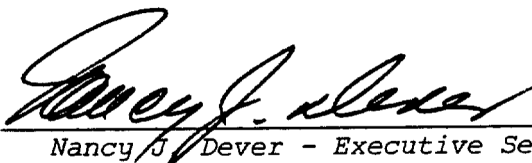
The position advertised in Bulletin No. 154 was not to be performed in the shop area. The Claimant knew that he was not qualified to bid for or to perform the work of that position. Employees also knew of this fact, as demonstrated by the previously quoted correspondence. Claimant consented to the agreement that his work be limited to the shop area under the supervision of an exempt employee. Since he was not qualified when Bulletin No. 154 was posted, the Carrier did not violate Rule 13(d) and (g).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.