

Award No. 187

Docket No. 170

2-NYC-MA-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That R. G. Pemberton, machinist at Elkhart, Indiana, New York Central Railroad, be paid for all time lost through violation of Rule 18, and be placed on job of machinist to maintain motor car.

JOINT STATEMENT OF FACTS: On May 8, 1936, there was a bulletin posted on the bulletin board in the Elkhart enginehouse advertising a vacancy for one machinist to maintain motor cars. The above mentioned bulletin was posted and signed by Mr. J. J. Wenzel, general foreman. The required time in accordance with the shop crafts' rules expired Tuesday, May 12, 1936. There were two machinists who made application in writing for the above mentioned job. Mr. R. G. Pemberton, seniority date 5-1-19, and Mr. A. H. Russ, seniority date 8-11-22. Mr. A. H. Russ, who was temporarily assigned, was allowed to remain on the job as a regular assigned employee.

POSITION OF EMPLOYEES: That Rule 18 of the current agreement between the New York Central Railroad Company and System Federation No. 103, was violated when the officials in charge assigned Mr. A. H. Russ, who was the junior employee making application for the vacancy that had been posted. Rule No. 18 reads in part as follows:

"When new jobs are created or vacancies occur in the respective crafts, the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. . . ."

The supervision has raised the question of qualification in this case. Mr. Pemberton has been working at the machinist trade for the last 31 years, after serving five years as an apprentice for the Canadian National Railroad, and always has been a loyal and faithful employee since being employed by the New York Central Railroad Company, and his ability as a mechanic has never been questioned by any of the supervision whom he has worked for. Therefore, we contend that the company has used discrimination, pure and simple, by not complying with the rule and allowing him (Mr. Pemberton) a reasonable time to prove his qualification for the job as motor maintainer.

created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application in duplicate to the official in charge, who will forward one copy to the Local Committee.

An employee exercising his seniority rights under this rule will do so without expense to the carrier; he will lose his right to the job he left; and if after a fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft."

The employees are placing an interpretation on this rule in this case which would have required the management to assign the senior bidder to this vacancy without regard for his qualifications and for the management's responsibility for safe and reliable operation. The motor car maintainer has the responsibility for the inspection and maintenance of this gas-electric rail motor car at Elkhart, and the management has the responsibility of assigning to this work a man upon whom it can rely to satisfactorily perform the work required. Adequate detailed knowledge of the type of equipment involved and the ability to apply such knowledge are necessary in order to perform the work of maintaining gas-electric rail motor cars. Prior to May, 1936, Pemberton never had availed himself of opportunities to familiarize himself with this work. On the other hand, Russ did take advantage of opportunities on his own time to prepare himself to handle this work, and after such preparation did, on various occasions, in the absence of the regular man assigned thereto, demonstrate that he was well qualified. Therefore, in assigning Russ to the position after Pemberton had failed to qualify, as above shown, the management in no way violated Rule 18 and the discrimination alleged in the Position of Employees is unfounded.

We recognize that the principles of seniority should govern in filling new positions or vacancies, provided employees who have sufficient seniority also have sufficient ability to perform the work of the position claimed. It would be an unwarranted application of Rule 18 to assign senior applicants to the inspection and maintenance of gas-electric rail motor cars without due regard for their ability to handle the work in a satisfactory manner.

OPINION OF THE DIVISION: The only issue in this case is whether or not employee Pemberton was given a fair trial to qualify for the position of motor car maintainer.

It appears that the position of motor car maintainer required certain knowledge of gas-electric rail motor cars. It also appears that Pemberton had had many years experience as mechanic but that his experience related to steam locomotives, and work on gas-electric motor cars was unfamiliar to him.

Pemberton was assigned temporarily to the position of motor car maintainer, was given certain duties to perform and asked certain questions. After he had been on the position between four and five hours it was determined by the management that he was not sufficiently qualified to perform the duties of that position.

While the charges of unfairness and discrimination made by the employees are many, they are not substantiated by the record and in the absence of such evidence in the record tending to establish unfairness and discrimination, we cannot disturb the decision of the management.

We have not overlooked the testimony of the general chairman to the effect that one Ball, the local foreman, had at one time made a statement indicating that Pemberton was not desired in the position of motor car maintainer. However, at best this merely indicates an attitude on the part of one of the representatives of the management and does not establish that Pemberton's trial for the position of motor car maintainer was unfair.

Assignment of work in full compliance with rules is a proper prerogative of the management.

We have no alternative but to sustain the action of the management.

The claim of the employees must be denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The carrier complied with Rule 18 of the agreement with System Federation No. 103 and gave to Machinist Pemberton a fair trial to permit him to show whether or not he had the ability to perform the duties of the position of motor car maintainer.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.