Award No. 250

Docket No. 263

2-IC-MA-'38

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That Rule 19 was violated when Machinist Richard Gorsky was removed from lead air brake job on June 1, 1935.

(b) That he be compensated the difference in earnings between actual earnings and the amount earned by the employe assigned.

JOINT STATEMENT OF FACTS: On May 27, 1935, a vacancy of "Lead Air Brake Man," Burnside Shop, was advertised by bulletin, in accordance with the provisions of Rule 19. Applications were filed by Machinists Richard Gorsky and W. B. Finn. Richard Gorsky, the senior applicant, was assigned to the position on June 1, 1935, worked about four hours in the capacity of lead man, and was removed from the position by District Air Brake Foreman Atwood. W. B. Finn was then assigned to the position.

POSITION OF EMPLOYES: The rule involved in this dispute reads as follows:

> **"Rule 19.** When new jobs are created or vacancies occur in the craft, the oldest employe in point of service will be given preference for assignment thereto. All new jobs or vacancies in the craft will be bulletined for five days before being filled permanently, except that jobs or vacancies of less than thirty (30) days duration, need not be bulletined. Employes desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman."

As indicated in statement of facts, a vacancy for lead air brake man was bulletined in accordance with Rule 19 of our agreement. Richard Gorsky, who is the senior applicant, was awarded the job for four hours, by general foreman and shop foreman at this point. Then district air brake foreman saw fit to remove Richard Gorsky as lead air brake man and assign W. B. Finn, giving no reason as to why he removed Richard Gorsky, who was examined by the district air brake foreman under date of March 5, 1934, and who did certify in writing as to Mr. Gorsky's competency. See Exhibit A.

On a later date, after the protest of the action by the supervision which removed Mr. Gorsky from his position awarded by bulletin, a second examination was conducted by the district air brake foreman, Mr. Atwood, and air brake engineer, A. J. Pichetto, and no findings of the examination have been made known to the employe, Mr. Gorsky. The employes also wish to

on the various duties, and his employment would be not only unproductive, but create an unnecessary hazard contrary to good judgment. While the seniority principle is a major element of the rules, it cannot be applied in every case and do justice to the successful operation of the railroad. This dispute is not one of principle or theory, but of fact and reason.

Award No. 187 issued by this board supports the carrier's position in this case. Furthermore, the following opinion rendered by the Third Division of the National Railroad Adjustment Board in a similar case (Award No. 592) supports the conclusion that seniority alone does not entitle an employe to a position which he is not qualified to handle:

> "This case involves wholly a question of fitness and ability. The junior man awarded the position of crane operator had some experience on the position while the petitioner, who is senior, merely thinks he could operate it if accorded some instructions and practice; quite possibly he could but the carrier is under no obligation to assume this hazard when it has available a known qualified man. It is not a question of relative qualifications; the man awarded shows actual qualifications; the petitioner mere potentiality."

Inasmuch as this case involves a dispute regarding the question of qualification, the evidence herein proves conclusively that Gorsky is not qualified to handle the position of lead air brake man. No rules have been violated and we respectfully ask that the claim 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 position of lead air brake man had been filled for approximately six months without bulletin, which was not in accordance with the rules, and at the request of the employes' representatives bulletin for vacancy of, lead air brake man was posted and Richard Gorsky, senior applicant, was awarded the position. After being on this position about four hours, he was removed by order of the district air brake foreman who alleged he was not qualified to handle the duties of the position.

District air brake foreman has general supervision over air brake work in his district, but is not directly confined to this shop.

It appears from the record that Gorsky was removed from position of lead air brake man primarily from the general knowledge the district air brake foreman had of his work rather than from any actual inability to successfully perform his duties.

Richard Gorsky is a man of years' experience in air brake work and his general qualifications as such are not questioned.

After several conferences between employes' representative and management over the issue, general superintendent of motive power agreed to give Mr. Gorsky the position of air brake lead man, providing he passed a satisfactory examination, which was given him by general air brake inspector. This examination appears to have consumed two days and was very thorough and of a technical nature, the result of which disqualified Mr. Gorsky for the position.

While this Division does not desire to set up its judgment for the qualifications of a position against those who are responsible for the work it is of the opinion that Mr. Gorsky should be given opportunity to demonstrate his ability as a lead workman from actual trial on the job.

AWARD

Mr. Gorsky will be given an opportunity by fair trial to demonstrate his ability for position of lead air brake mechanic.

Compensation for the difference between actual earnings and earnings of employe assigned is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of July, 1938.