

Award No. 532

Docket No. 529

2-NYC-FO-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Cosimo Polimeni, stationary fireman employed at 161st Street boiler plant, should be awarded the position of assistant engineer at this plant which he bid for, in accordance with bulletin posted by Mr. W. D. Bullard, Supervisor of Service Plants, on December 28, 1937, and that he be compensated for the difference in the rate of pay while being denied said position.

JOINT STATEMENT OF FACTS: A vacancy occurred in the 161st Street Boiler Plant for position of assistant engineer on January 1, 1938, due to the retirement of one of these engineers effective this date, and on December 28, 1937, this position was bulletined at the 161st Street Boiler Plant as follows:

"Bids will be received by Mr. W. D. Bullard, Supvr. of Service Plants for the position of Asst. Engineer at 161st Street Boiler Plant (6) days per week rate \$159.20 per month Sundays and Holidays pro rata rate. It will be understood that the assigned day off will be taken as Sunday for payroll accounting.

"Bids will close at 5:00 P. M. Jan. 1st, 1938.

(Signed) W. D. Bullard."

On December 30, 1937, Cosimo Polimeni submitted his bid for the position of assistant engineer.

POSITION OF EMPLOYEES: We believe that Cosimo D. Polimeni should be awarded said position in question due to the fact that he has complied with Rule 12 of the Firemen and Oilers' Agreement effective October 1, 1929, when he bid for said position that became vacant due to the retirement of one of the assistant engineers.

Rule 12 reads as follows:

"Rule 12—New Positions or Vacancies.

(a) When new positions are created or vacancies occur in classes in groups (a) and (b), of Rule No. 1, a bulletin will be posted for a period of 5 days and will show location, descriptive title, hours of service and rate of pay.

We submit as carrier's Exhibit B, photo offsets of the records kept by Polimeni on January 5 and February 15, 1938, consisting of the following:

Sheets 1, Form E. D. 51-A, Workman's Daily Time Ticket.

Sheets 2 and 3, Form S P 211, Daily Boiler Room Log.

Sheet 4, Entry prepared by Polimeni for the Engineer's Log on February 15, 1938.

We also submit as carrier's Exhibit C, photo offsets of the records on Form S. P. 211 kept by Assistant Chief Engineer Sager during the same hours on these two dates.

We also submit as carrier's Exhibit D, photo offset of a sample page from the Engineer's Log showing entries covering the twenty-four hour period on February 15, 1938.

Carrier's Exhibit B is a sample of the illegibility of Polimeni's handwriting and demonstrates his unfitness in this respect to maintain the records required at the plant. In addition, in comparing the readings on Form S P 211 of carrier's Exhibit B with the readings on the corresponding form of carrier's Exhibit C, it will be noted that many inaccuracies appear in the readings made by Polimeni.

In the opinion of the officials in charge, Polimeni does not have sufficient qualifications to perform all of the duties attached to the position of assistant engineer at 161st Street. His deficiencies, as hereinbefore set forth, would defeat any attempt he might make to perform the duties of assistant engineer, and, therefore, refute any contention that he possesses qualifications for the position. The officials in charge did not feel that they could overlook Polimeni's deficiencies in the light of the duties and responsibilities attached to the position of assistant engineer in an important boiler plant like 161st Street, and, consequently, assigned an individual thereto who was qualified to perform the duties in a safe and efficient manner.

It is obvious from Rule 12 (c) that the exercise of seniority rights established under Rule 11 is contingent upon qualifications. Manifestly, from the standpoint of qualifications, even if he had held seniority rights as assistant engineer, which he did not as he never held a position as such, Polimeni did not merit favorable consideration for the position.

From the foregoing, it will be apparent that Polimeni was not eligible for the position of assistant engineer under either of the basic requirements of the rules; he had neither seniority rights as assistant engineer nor qualifications to perform the duties of the position. Any charge of discrimination in such circumstances is obviously unjustified.

The carrier feels confident your Board will recognize that, in filling a vacancy for which no employe having "rights" thereto had submitted a bid, the management is not obligated to promote an employe from a lower class in utter disregard of qualifications, but may select a qualified man, as was done in this case, in order to obtain a responsible individual who is qualified to perform the work in a safe and efficient manner. In the present case, the management was obligated to follow this course as no qualified employe was available. To have awarded the position to the claimant would unquestionably have resulted in many errors of omission and commission, unsatisfactory service to and endless complaints from pay tenants in the office building as well as from our own people in charge of facilities which are supplied from this plant. These responsibilities management cannot evade, and, consequently, it urges that the employe's 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.

That the evidence of record discloses no violation of the agreement or any adequate ground for disturbing the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1941.