

Award No. 2094
Docket No. 1895-I
2-L&N-1-'56

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

GILBERT E. MARTIN—Carman

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: The question or claim involved in this dispute is whether or not seniority rules and the rules regarding promotion of employes set forth in the Agreement between the Louisville & Nashville Railroad Company and its Carman have been ignored and violated by the company in failing to properly bulletin vacancies as Car Inspector, Foreman, thereby failing or refusing to give employe, a fully qualified car inspector, an opportunity to bid on numerous vacancies as Foreman; and in failing or refusing to promote employe who had indicated his desire and readiness to accept promotion, to the position, of Car Inspector, Foreman; although the men actually promoted to such position had less seniority and were less qualified than the undersigned; and whether or not employe by reason of such violation and breach of the Agreement is entitled to be awarded a position as Car Inspector, Foreman, with a money award for the regular pay of such position from the date Agreement was first breached less the pay he has drawn as Car Inspector.

EMPLOYEES' STATEMENT OF FACTS: Employe, Gilbert E. Martin, has been employed by the Louisville & Nashville Railroad Company at Nashville, Tennessee, since April 4, 1944 as carman, serving as car inspector and as lead workman. He is presently serving as car inspector in the L&N Yards at Nashville, Tenn.

The L&N RR. Co. is a common carrier, incorporated in Kentucky but doing business in Tennessee and many other states. It maintains extensive yards in Nashville and at nearby Radnor. At the time this dispute arose employe was working under the general supervision of Mr. C. C. Owens, car foreman and both were under the master mechanic at Nashville, Mr. C. A. Ellner.

The railroad has a working agreement or contract with the Brotherhood Railway Carman of America of which union employe is a member. At the time this dispute arose one John R. Moon was local chairman handling grievances and other disputes at this point.

In December 1952, employe was informed by Mr. Owens that it was expected a position as car inspector, foreman would soon be available and

19(g) Position of lead workman and assistant schedule foreman will be filled by bulletin in accordance with Rule 18."

It will be noted section (g) provides that only positions as lead workman and assistant schedule foreman will be bulletined in accordance with Rule 18. No other positions as foreman are covered by the agreement. It follows, therefore, that the position as foreman-car inspector, to which Mr. Martin refers, not being covered by the agreement, there is no requirement that it be bulletined. The position not being covered by the bulletin or classification of work rules of the agreement, it is carrier's contention that in awarding positions as foreman, while it is necessary that preference be given to the promotion of employes from the ranks of mechanics, it is privileged to select the employe who in the carrier's judgment is best fitted for the particular assignment. There is no established agreement rule setting forth standards with respect to the manner in which the preference reserved to employes covered by the agreement should be effectuated.

As information, prior to bringing the instant case before the Second Division of the Adjustment Board, Mr. Martin engaged Mr. T. E. Simrall, Attorney at Law, Nashville, Tennessee, to handle his protest with Mr. G. C. Howard, director of personnel, L&N Railroad. On August 31, 1953, Mr. Howard addressed the following to Mr. Simrall:

"Yours of August 17, concerning Mr. Gilbert E. Martin, about whom you wrote us on July 30. Delay in making reply to your letter was due to the fact that it was necessary that we make inquiry of the local people concerning the matter about which Mr. Martin complained.

It now develops that Mr. Martin was given due consideration along with a number of other employes who had reason to believe, as Mr. Martin did, that they were duly qualified for promotion to the position as foreman. As a matter of course, the Company could not promote all such applicants, and therefore, selected the one whom it considered best qualified. Its action in this respect was a matter of using its own judgment, as to which it is not in any way restricted. Neither Mr. Martin nor any other applicant, even upon proof of sufficient or superior ability, has any basis for complaint."

A review of the car repairers and inspectors seniority roster, dated January 1, 1955, copy submitted herewith and identified as Exhibit A, reveals that Nos. 12, 14, 30, 36, 48, 50, 72, 76, 85, 89, 94 and 105 have been promoted to positions as foremen. While it is true that there are 5 carmen junior to Martin who have been promoted, it is also true that there are 60 carmen senior to Martin who have not been promoted.

The carrier submits it is nowise restricted in determining qualifications for supervisors in its various mechanical crafts. Once these qualifications are established, the carrier may then exercise its discretion in selecting the employe it considers as best fitted to meet them.

As mentioned in the foregoing, Mr. Martin was given consideration along with a number of employes who had reason to believe—as Martin did—that they were qualified for promotion to position as foreman. Naturally, since carrier could not promote all who had been considered, it selected the one whom it felt best met all of the qualification requirements—which it had a perfect right to do. In these circumstances, therefore, the claim of Martin is without merit and should 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 this dispute were given due notice of hearing thereon.

This case is before us because the carrier, in selecting formen, passed over the claimant. The claimant was senior to five junior carmen who have been promoted since March 1, 1953. Sixty carmen senior to Martin have not been promoted during this period.

Rule 18 applies to the bulletining of vacancies within the respective crafts which are parties to this agreement. The positions of foreman are not covered by said agreement.

Rule 19(a) is the pertinent provision of the working agreement and with which we are here concerned.

"Rule 19(a) Mechanics in service will be given preference to positions of foreman, qualifications to govern, with due regard being given to seniority."

The rule provides by its wording "qualifications to govern." This carrier considered others to be better qualified than the claimant, and such selection was made on the basis of "the best qualified." The record reflects that such application was proper in the light of the wording of the rule and its application throughout many years.

The understanding between the parties to the agreement as to its meaning should certainly be given weight where a rule is not precisely spelled out to the point which precludes any need for interpretation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1956.