Award No. 2373
Docket No. 2286
2-UP-SMW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Sheet Metal Workers)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier improperly and promiscuously employed, hired new, and transferred employes from other seniority divisions as Sheet Metal Worker journeymen as well as promoting junior helpers to journeymen, with less experience and less seniority than Sheet Metal Worker Antonio Rino, starting with assignment of bulletin No. UD-54 dated June 21, 1954.

2. That accordingly the Carrier be ordered to:

a) Discontinue these improper assignments and practices;

b) Additionally compensate Sheet Metal Worker Helper Antonio Rino in the amount of the difference between the helper's rate that he has received and the mechanic's rate that he would have received had he been properly assigned.

c) Place Mr. Rino's name on the seniority roster where it rightfully belongs.

EMPLOYES' STATEMENT OF FACTS: At the outset it must be understood that this water service department does not employ apprentices. Mechanics are trained by advancing helpers who are required to serve four years as helper and advanced helper before establishing a journeyman's seniority date.

Prior to July 1, 1954, helpers were promoted in accordance with their seniority, thereby according them a seniority date as journeyman after they had served four years as advanced sheet metal workers-water service helpers. This is confirmed by agreement of March 23, 1944.

less than four years experience, but does not require that the "setting-up" of a helper be on the basis of seniority or length of service. On the contrary, the established practice under this agreement has been to select helpers for "set-up" to mechanic by agreement between the carrier's supervisory forces and the organization's local chairman solely on the basis of apparent ability and qualifications and without regard to seniority or length of service. The "setting-up" of those helper employes who did work as "set-up mechanics" was in each case accomplished in accordance with the above established practice, and each had the approval of the organization's local chairman.

Under these circumstances the claimant had no contractual right to work as a sheet metal worker (mechanic), and having demonstrated his own lack of qualifications for such status had no right to object when other employes with helper seniority by mutual agreement between the carrier's supervisory forces and the organization's local chairman were "set-up" to work as sheet metal workers (mechanics) in accordance with the agreement and the established practice.

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 primary claim in this case is the contention of Sheet Metal Worker Antonio Rino that he should have been used as a mechanic on and after June 21, 1954. The factual situation is set forth in Award 2258. We shall not repeat it here except as it is necessary to resolve the dispute.

A sheet metal worker helper has a contractual right to mechanic's work only after four years' service as a helper. The Carrier is not required to promote helpers who have not qualified under the rules who do not have the ability to perform the work. The Carrier may, however, upgrade helpers who appear to possess sufficient ability to perform mechanic's duties without such helper attaining seniority as a mechanic. Such temporary promotions of helpers who have not qualified under the rules are made on the basis of qualifications without regard to seniority. Award 2258. This Board has held, however, that when a Carrier elects to use employes of a certain class it must use such qualified employes within the seniority district where the work is to be performed before calling those from another seniority district. Award 2259.

In the present case the Carrier used helpers who were junior to the Claimant. It also used a gang from another seniority district without using the Claimant. The Carrier asserts that Claimant was not qualified to do the mechanic's work required at the time these employes were used. The Organization's Local Chairman concurred in the views of the Carrier that Claimant was not qualified. The Organization relies almost entirely on the service record of the Claimant which shows that he had previously been upgraded to mechanic for more than two years. The Carrier's reply is that Claimant had been used for more than two years as an upgraded mechanic and that he had demonstrated his lack of ability to perform the type of work being performed when the grievance arose.

The Carrier found in the instant case that Claimant was not qualified to be upgraded. The Local Chairman concurred with the Carrier on this point. The service record is not conclusive on the question of Claimant's qualifications. The burden is upon the Claimant to establish his claim by

showing that he was qualified to do the work for which claim is made. He has failed to do so. His claim cannot, therefore, be sustained.

It is asserted in the record that the Organization's Local Chairman was coerced by Carrier when he agreed that Claimant was disqualified. There is no evidence in the record to sustain this assertion. The Local Chairman appears to have sustained a convenient loss of memory on this subject since the filing of the present claim. His failure to remember is not evidence. We find nothing in the record that can justify an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1956.