

Award No. 2469

Docket No. 2261

2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Machinist Louis Maylor was unjustly disqualified from the position of Machinist 39-M-1, which was advertised in Bulletin No. 634-2-SC, Job No. 1, dated September 24, 1953, and awarded to Maylor by award dated October 1, 1953.

2. That the Carrier be ordered to assign Louis Maylor on the position which was awarded to him by bulletin and from which he was unjustly removed by disqualification by the Enginehouse Foreman.

EMPLOYEES' STATEMENT OF FACTS: Machinist Louis Maylor, hereinafter referred to as the claimant, has a seniority date as machinist, April 28, 1953; machinist helper, May 8, 1951; assigned laborer, May 8, 1951 and common laborer, February 19, 1951.

Under date of September 24, 1953, Bulletin No. 634-2-SC, Job No. 1, copy of which is submitted herewith and identified as Exhibit A, was posted at the Orangeville enginehouse, Baltimore, Maryland, by the foreman, P. A. Schubert, advertising for a machinist position, the duties reading as follows:

"Make daily inspection, service and repair mechanical and air brake equipment on Diesel-Electric Locomotives. Must be qualified on air brake equipment and to otherwise perform duties mentioned above. Must be familiar with rules, laws and regulations governing limits of wear, etc., governing the operation of Diesel-Electric Locomotives and any other duties as may be assigned."

Notice of award was posted by the enginehouse foreman under date of October 1, 1953, showing Bulletin No. 634-2-SC, Job No. 1 as being awarded to claimant, copy of which is submitted and identified as Exhibit B.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Railway Employees' Department, A. F. of L., System Federation No. 152, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has shown that the claimant was properly disqualified from the machinist position in question on the basis of the written examination; and that he is not entitled to be assigned to the position approximately one month after disqualification on the basis of the applicable agreement.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 2-A-3 reads as follows:

"An employee awarded an advertised position for which he bid, and failing to qualify within ten (10) working days for the position selected, will retain seniority, subject to Rule 3-A-1, and will within five (5) working days return to his former position, unless it has been awarded to a senior employee, in which event he may exercise seniority.

Where it is apparent before the expiration of ten (10) working days that an employee does not possess the necessary ability and fitness to permit him to qualify, he will be removed from the position prior to the expiration of the ten (10) working day period. Other employees displaced in application of this rule may exercise seniority in accordance with Rule 3-D-4.

Employees will be given full cooperation of Supervisory Force and others in their effort to qualify."

The carrier gave the claimant a written examination covering forty-six (46) questions, with various point values established for each question, with eighty per cent (80%) being the passing grade. The claimant scored 73.27% which is somewhat below passing, and he was thus disqualified. The agreement does not specifically provide for written tests to determine qualifications, and neither does it specifically prohibit such tests. To determine whether

or not an employe is qualified is usually a matter of judgment by management. Management may use any number of methods to aid it in forming a judgment, and so long as the methods used are fair and reasonable, and administered without discrimination, we cannot substitute our judgment for that of management. We find in this case that management did not exercise its judgment in an arbitrary or discriminatory manner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2469.

The majority concedes that the agreement in effect between this carrier and System Federation No. 152 does not provide for written tests to determine qualifications of employes in under said agreement, but in making the award ignores this fact. The agreement was made pursuant to the Railway Labor Act, Section 2, Seven, of which requires:

"No carrier, its officers or agents, shall change the rates of pay, rules, or working conditions of its employes, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

Therefore the majority has erred in making the instant award.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink