

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

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the current agreement was violated when the Illinois Central Gulf Railroad did not award W. H. Sutherland a vacancy on the wrecker, but did award it to E. B. Poindexter, a junior employe in seniority to Mr. Sutherland.
2. That accordingly the Illinois Central Gulf Railroad be ordered to compensate W. H. Sutherland, for all overtime E. B. Poindexter, makes on the Memphis wrecker starting November 10, 1971, and continuing until the violation is corrected.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant herein is employed by Carrier at Memphis, Tennessee in the Carmen's classification. The instant grievance arises out of Carrier's alleged violation of Rule 19, 127 and 130 when it awarded a wrecker assignment to Carman E. B. Poindexter, a carman junior in service to claimant, rather than to claimant. The facts out of which the dispute arose are not in contention.

Carman R. H. Mixon was assigned to the Johnston wrecking crew, as needed, since 1967. In October 1971, Carman Mixon advised Carrier that he no longer wished to work the wrecker assignment. Accordingly, on November 1, 1971 Carrier issued Bulletin No. 69 reading as follows:

"Carman to work on wrecker when needed and will also work as Derrick Engineer when needed and must have a fair knowledge of the 250 ton derrick; be able to trace trouble and make temporary repairs to this machine in an emergency. When not engaged in wrecking service the successful applicant will work regular assigned job and all other work coming under the scope of the Carmen's Agreement.

Off days will be the same as on job now held.

Applicants must work 7:00 A.M. to 3:00 P.M., or 7:00 A.M. to 3:30 P.M.

Must maintain a telephone in his residence and keep the wrecker engineer informed of his whereabouts at all times.

Applicants will be subject to call day or night and must be physically able to perform this type of work.

Rate of pay - \$4.21 per hour."

Four carmen, including claimant W. H. Sutherland and carman E. B. Poindexter, filed for the bulletined position. On November 9, 1971, Carrier conducted a test to determine the ability of each of the applicants to operate the 250 ton derrick. Claimant proved unable to operate the derrick and Poindexter was able to operate the machine fully. There is no allegation that the test was not administered fairly or that claimant could operate the derrick. On November 10, 1971 the position was awarded to Poindexter.

On November 14, 1971 the Organization submitted the instant claim on behalf of claimant, for all overtime made by Carman E. B. Poindexter on the Memphis wrecker from November 10, 1971, as a continuing violation, on the grounds that Claimant improperly was denied the position.

The Organization relies almost exclusively upon Rule 19 of the Agreement to contend that Claimant as the senior employee should have been given the assignment, notwithstanding his conceded inability to perform the work of derrick engineer on the 250 ton derrick. Under this theory, the Organization insists that seniority alone is the relevant factor in awarding such assignments irrespective of qualifications. Moreover, without waiving that position, the Organization also contends that Carrier was obligated under the

circumstances herein to train Claimant and give him a reasonable time to qualify on the derrick. Additionally, the Organization maintains that Carrier improperly changed the job qualifications from those originally bulletined in 1967 by adding certain job requirements, including operating ability on the derrick, to the assignment.

Carrier asserts that, under well recognized principles, prior qualification is a condition precedent to entitlement to a position under seniority rules. Inasmuch as Claimant admittedly was not qualified, his seniority was not alone sufficient to support his claim to the job. Also Carrier maintains that it has a right fairly to test applicants for a bulletined position, as it did in the instant case but has no obligation to tutor the senior bidder. Finally Carrier insists that it has the right to assign work in any manner not prohibited by the applicable Agreement.

Careful consideration of all the evidence and circumstances herein compels a conclusion that there was no violation of the Agreement in this case.

We frequently have held that Carrier has the right to assign work and to determine the job content of positions, except as restricted by the express terms of the Agreement. Awards 3454, 6405, 12346, 13490, 13719 et al (Third Division). Likewise, we have upheld the propriety of Carrier tests to determine qualifications on ability, so long as they are fairly and reasonably applied in a nondiscriminatory manner. Awards 1118, 4214 (Second Division), 12461, 15002, 15493 (Third Division). In the instant case there is no evidence of discrimination or of arbitrary, unreasonable or capricious activity by Carrier in assessing Claimant's qualifications.

Finally, the applicable language of Rule 19 requires that senior employee be given "preference" but it does not mandate that they be awarded a bid-in assignment in every case irrespective of possession of the minimal qualifications for the job. This Board frequently has denied claims wherein the senior employee was devoid of qualifications and was therefore not awarded the assignment under Agreement language like that of Rule 19 herein. Awards 11451 and 15074 (Third Division).

In all of the foregoing circumstances, the claim is without merit and must be denied.

A W A R D

Claim of Employes Denied.

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Award No. 6760
Docket No. 6570
2-ICG-CM-'74

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1974.