

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7186
Docket No. 7027
2-C&O-FO-'76

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, H. L. Byrd was unjustly dealt with and his service rights violated when he was not permitted to exercise his rights to a foreman's position after bidding on such position which was bulletined on July 2, 1974, in compliance with Rules 21, 24 and 25 of the agreement between the Chesapeake and Ohio Railway Company and the International Brotherhood of Firemen and Oilers.
2. That accordingly the Carrier be ordered to award the foreman's position to H. L. Byrd effective July 14, 1974 and that H. L. Byrd be compensated at the foreman's rate of pay from July 14, 1974, date such position was awarded to R. G. Davis, Jr.

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.

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

The Second Division asserts jurisdiction in this matter. The Carrier claims since the matter involves a position of Foreman (which position is normally under the jurisdiction of the Fourth Division) that the Second Division has no standing to hear the claim. To the contrary, the facts are that the claim is raised by an employee in the classification of laborer, a position clearly under Second Division jurisdiction. Further, alleged violations set forth by the Organization refer to the pertinent Agreement covering laborers (and many other classifications). It is the status of the claimant, and the provisions of the Agreement under which he is covered, which are relevant. That his claim concerns a position which he seeks and which would be governed by a different Division if he obtained it is purely incidental.

In its argument that claimant was improperly denied the position of Laborer Foreman, the Organization refers to three rules in the applicable Agreements as follows:

Rule 21: Selecting Foreman.

"When selecting foremen or gang leaders, employees will be given consideration for promotion, and if selection is made from employees, proficiency and seniority will govern, the company to be the judge of proficiency. It is the policy of the company to promote its own men and only when competent employees cannot be found in the ranks or when competent employees will not accept vacancies or new positions, will it be the disposition of the company to vary from this policy."

Rule 24: Bulletining of New Jobs and Vacancies

"Promotions to new jobs or to fill vacancies (not supervisory) will be made after bulletin notice has been posted for a period of 5 days on bulletin boards at point of employment - seniority and ability to govern. Employees desiring the new job or vacancy stated in notice shall file their application with the officer in charge whose name appears on the bulletin, and shall personally deliver a copy of the application to the local committeeman. If anyone who has the right to make application is not available during or at the expiration of the 5-day period, reasonable time may be extended to allow such a one or ones an opportunity to make application. New jobs or vacancies may be filled temporarily pending permanent appointment."

Rule 25: Failure to Qualify on Jobs Bid In

"An employee exercising his seniority rights under Rule 24 will do so without expense to the Carrier. If he does not qualify on the job transferred to in reasonable time, say 5 days, he will lose his rights to the job he left, and will be compelled to take whatever is open in his craft. If at the expiration of the 5 days' trial, however, the employee's progress indicates he is going to qualify, the foreman may grant more time."

Carrier bulletined the position of Laborer Foreman, for which four laborers expressed interest through bids. The Agreement does not require the Carrier to bulletin this supervisory position, and this Board finds that full application of Rule 24 need not govern. Further, Rule 25 is inapplicable in that it is concerned solely with rights of an employee, after transfer to a new job, which is not the circumstance in the instant case.

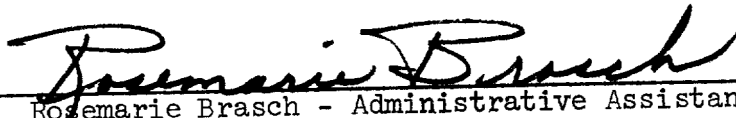
What is fully applicable is Rule 21, which leaves determination of "proficiency" in selecting foremen within the judgment of the Carrier. The burden shifts to the Organization to show the Carrier has so grossly failed to exercise its judgment that its decision should be reviewed by the Board. This the Organization failed to do on the property, or even (were the Board to accept it, which this Board will not do) in additional argument made to the Board. This Board will not disturb Carrier's reasonable use of the rights under Rule 21.

A W A R D

The Second Division has jurisdiction. Claim denied.

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 30th day of November, 1976.