

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employee:

Claim that the Carrier:

1. Violated the provisions of Rules' #16, #17 and #29 of the Controlling Agreement when it improperly assigned a junior Machinist employee to a Mechanic-in-Charge position in lieu of a senior applicant.
2. That accordingly the Chicago and North Western Transportation Co. be directed to compensate Machinist R. Niemi in the amount of \$11.28 per day, the differential in pay between Machinist R. Niemi's position and Mechanic-in-Charge position currently in dispute. Such compensation, as requested, commencing with the calendar date of February 8, 1975.
3. Compensation as requested by continuing in manner from February 8, 1975 until such time as Machinist R. Niemi is properly assigned to Mechanic-in-Charge position #663.

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.

On January 30, 1975 Carrier posted a bulletin advertising the availability of Mechanic-in-Charge position (#663) at Carrier's East Minneapolis fueling facility. Claimant applied for the position which was assigned to an employe who was junior to Claimant.

The Organization contends that Carrier violated Rule 16 of the Agreement and Paragraph 7 of the June 1, 1939 Memorandum of Agreement.

Rule 16 provides in pertinent part:

"When new jobs are created, or vacancies occur in the respective crafts, such new jobs or vacancies will be bulletined.

* * *

"In filling vacancies or new jobs, the oldest employe in point of service will be given preference."

Paragraph 7 of the June 1, 1939 Memorandum of Agreement states:

"In filling positions of mechanics-in-charge, senior mechanics at the point will be given preferred consideration."

The Organization contends further that Claimant was qualified for the classification of Mechanic-in-Charge because he was assigned to relieve the Mechanic-in-Charge for a five week period in 1973-1974.

Carrier's contentions may be summarized as follows:

- 1 - Bulletining the position of Mechanic-in Charge was an error made by a local Superintendent.
- 2 - Mechanic-in-Charge positions have always been appointed by Carrier since 1936 when the job title was changed from Working Foreman to Mechanic-in-Charge.
- 3 - Claimant was less qualified than the junior employe selected based on Claimant's performance during the five week relief period in 1973-1974.
- 4 - Carrier has the right to determine qualifications.

The Board is of the opinion that the claim must be denied.

Assuming, without deciding, that Carrier is bound by an erroneous bulletin, Paragraph 7 of the June 1, 1939 Memorandum Agreement and not Rule 16 determines the criterion for the selection of a Mechanic-in-Charge. Paragraph 7 does not require the mandatory appointment of a senior employe. It has the effect of requiring the appointment of the senior employe if there are two or more employes deemed to be equally qualified. Determination of qualification is the Carrier's province unless it is shown that Carrier was arbitrary or capricious in its determination. Such has not been shown in the instant dispute.

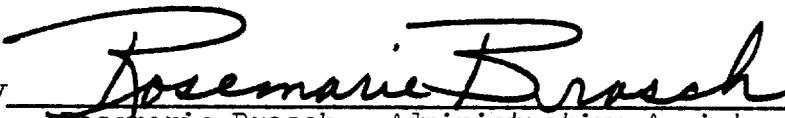
Second Division Award No. 861 is distinguishable in that qualification was not in issue in that dispute.

A W A R D

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 5th day of April, 1977.