

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Chicago, Rock Island & Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated the provision of Rule Number 20 of the current agreement and was unjustly dealt with and forced Laborer Anthony J. Micile on furlough status effective December 4, 1975. Laborer Anthony J. Micile was furloughed from the Car Department, he placed his bump on a Fireman & Oiler position in the Diesel or Roundhouse, bumping a junior employee. After placing his bump, Master Mechanic would not allow Laborer Micile to work on position he placed his bump, there being no other junior employees for Laborer Micile to bump, Master Mechanic refused to let Anthony J. Micile to exercise his seniority to bump junior employee.
2. That Laborer Anthony J. Micile be compensated for all wages lost since December 4, 1975 and be returned to service of the Carrier with seniority, vacation, health and welfare and life insurance rights unimpaired.

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 entered the service of Carrier on August 12, 1969. Up until December 3, 1975, Claimant was employed as a Car Department Laborer in Carrier's Des Moines, Iowa facility. On December 3, 1975, Claimant was furloughed in a reduction of forces due to a serious decline in business.

At this time, Claimant advised Carrier of his desire to bump an employee junior to him on the Firemen and Oilers' seniority roster, and working at the Diesel Shop or Roundhouse at Des Moines, Iowa. However, Carrier's District Master Mechanic would not allow Claimant to displace a junior employee in the Diesel Shop or Roundhouse, on the basis of Claimant's two (2) previous disqualifications as a Locomotive Laborer in September, 1971, and September, 1975.

Rule 20 - Reduction in Force, reads in pertinent part:

"When forces are reduced at any point or in any department, seniority as per Rule 19 will govern in the department effected.

"When forces are reduced, or jobs abolished, a laborer thus affected may then exercise displacement rights in any one of the other departments on the basis of his laborer's seniority date with the railroad, and will take the rate of the job on which he places himself. Employees entitled to exercise seniority under this rule must do so within five (5) days or forfeit all seniority rights as laborer."
(Emphasis added)

Rule 25 - Retention of Senior Qualified Employee, reads as follows:

"When force is reduced the senior employees in the subdivision at the point of employment capable of doing the work shall be retained."

The record before us indicates that Claimant had difficulties while working the Hostler Helper position from August 14 through August 31, 1975. Based on the daily log kept by Carrier's Mechanical Officer, we note that Claimant did not grasp instructions such as staying in sight of the Hostler when moving engines; he did not comprehend which way switches should be lined; he had trouble hooking up fuel hoses to engines; he had to be told and instructed on where and how to sweep the floor; he was not able to operate a steam cleaning machine; he was not able to properly supply a locomotive with fuses, torpedoes, or drinking water without a detailed explanation from his foreman each time; and he washed only one side of an engine.

Now, Rule 20 has to be read in conjunction with Rule 25. That is, the more senior employee also has to be qualified for the position.

In matters of this kind the burden of proof belongs to Petitioner to prove by factual evidence of probative value that Claimant does possess the necessary qualifications, and can perform within normally acceptable standards. In the instant case, Petitioner has not proven that Claimant possessed the necessary knowledge and qualifications so as to permit seniority to prevail. Furthermore, Petitioner has not been able to show

that the action of Carrier was arbitrary, capricious, or designed to circumvent the Agreement.

Numerous decisions of this Board have consistently held that it is Carrier's right to determine fitness and qualifications, and that Carrier's decision is final and conclusive unless it is evident that such action is totally unreasonable. (See Second Division Award Nos. 6897, 6873, 6760, 5924, 3782, 5190, 4844, 3748, and 2469; also see Third Division Award Nos. 18462, 18353, 17948, 16871, 16546, 16471, 16360, 15780, 15494, 13471, 12394, 11572, and 10345).

We note Petitioner complaint that Claimant was not given adequate and proper training by Carrier. However, there is no language in the Agreement before us which requires that Claimant be given training for any specific length of time, nor is there any mention of the quality of training employees are to receive.

Therefore, based on all of the foregoing, we have no choice but to deny the claim.

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 2nd day of December, 1977.

