

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Ms. M. Serbus, Laborer, St. Cloud, Minnesota, was denied the right to displace a junior employee who occupied a Hostler-Laborer position.
2. That, accordingly, the Carrier be ordered to compensate Ms. Serbus for eight (8) hours pay at the Hostler Laborer rate on August 29, 30, and 31; September 2, 3, 4, 5, 6, 7, 9 and 10, 1981.

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 employees 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 Carrier maintains a freight yard and car repair shop at St. Cloud, Minnesota. The Claimant entered the service of the Carrier as a laborer at this facility on April 27, 1976. She worked at this and other Carrier shops until January 5, 1981 at which time she went on a medical leave of absence. On date of August 28, 1981, Claimant gave notice to the Carrier that she intended to return to work and wished to displace a junior laborer holding a hostler-laborer position. She was advised to return on Monday, August 31, 1981 and report to the foreman which she did. On arrival the foreman explained the duties of a hostler-laborer which according to the Carrier include the following:

- "a) Movement of locomotives for fueling, sanding, watering and other duties as required.
- b) Making and breaking locomotive consists including changing ends on locomotives and changing cab air equipment.
- c) Adjusting brakes, changing brake shoes, thawing out sanders, changing speed tapes and general duties associated with repairing locomotives for service."

The foreman also gave Claimant an "air brake and train handling manual", "the consolidated code of operating rules" and an "engine drawing book". The foreman also had the Claimant accompany him during his tour of duty "to review the physical layout of the roundhouse area" and the "hands on" workings of the job in question. The record does not show what duties, if any, the Claimant performed that day, but since the employees have not claimed time for that day we must assume that she performed none.

Claimant also reported to the roundhouse on September 1 and 2, but according to the foreman spent most of her time "using the company telephone".

Rule 12 read in part:

"Rule 12.

(a) A vacancy of thirty (30) calendar days or less ... may be filled without bulletining by transferring the senior qualified employee ..."

(d) Positions or vacancies bulletined pursuant to paragraph (b) hereof will be awarded to the senior qualified applicant ..."

Rule 13 reads in part:

"(a) When qualified, employees covered by this schedule will be eligible for promotion to a higher classification on the same roster in accordance with their seniority ..."

Clearly the qualifications of an employee is a determining factor in whether or not they can assume the duties of a position they have not previously worked and while we feel that the foreman exaggerated the qualifications necessary to be a hostler-laborer he did not exaggerate in advising that the duties did include the movement of locomotives. The employees have made no claim that the Claimant had ever operated or even started the engine of a diesel locomotive; the employees have instead stated:

"The carrier does have a policy of which assigned hostler-laborers are required to take and pass a test. However, the junior laborer that the claimant requested to displace, had never taken nor passed any test to qualify for position of hostler-laborer. In this regard, the claimant should have been considered as qualified to take a test to qualify as hostler-laborer if a junior was not required to take and pass the same test."

This argument is not persuasive, it may well have been that this junior laborer had at some other time performed the duties of a hostler-laborer and that carrier was aware of that fact, but even if she had not, and even if this junior laborer had been mistakenly promoted, that does not mean that the same mistake must be endlessly perpetuated.

The employees also write in part:

"He failed to mention Rule 12(a) which states in part 'employees will be given cooperation in qualifying for positions secured in the exercise of seniority'. Mr. Kuzma went on to state that no

rule of the current collective bargaining agreement was violated when claimant was disqualified. It is obvious that Rule 12(a) was violated when the carrier did not give the claimant any cooperation in qualifying as a hostler-laborer."

Insofar as not giving cooperation to the claimant in learning to qualify for the position of hostler-laborer the employees are to some extent correct, as the foreman did advise her that she must qualify on her own time. We do not feel that it was wrong to expect her to study the manuals furnished by the carrier on her own time, but as far as the starting, stopping, movement of locomotives or the change or adjustment of parts on locomotives is concerned, that would (unless she was able to purchase her own locomotive) be an impossibility.

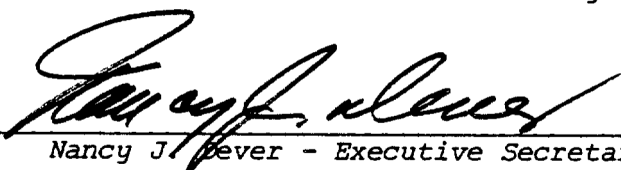
In considering all of the facts of the case, we find that the carrier was not arbitrary, capricious or unjust when they did not allow the claimant to displace a junior employe occupying the position of hostler-laborer and we will deny that part of the claim. We find that the foreman was arbitrary, capricious and unjust in not complying with the provisions of the rule and making at least some attempt to cooperate with claimant in learning that part of the required qualifications (the starting, stopping, movement etc., of the locomotive) which she could not get from manuals and which possibly could have been learned in the three days when she was, by carrier's instructions, on the property. We will sustain the claim to the extent of payment of wages at the straight time rate for days of August 31, September 2 and 3. We cannot sustain it before August 31 as she was not then on the property and we cannot sustain it after September 3 as starting with September 4 she was on another leave of absence.

A W A R D

Claim denied in part - sustained in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1984.