

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10670
Docket No. 10442
2-CMSP&P-EW-'85

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement, particularly Rules 17 and 70, on August 31, 1982, when it unjustly denied Electrician T. Aulinger his right to displace a junior electrician on the Maintenance Crew in Milwaukee, Wisconsin.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to award Mr. T. Aulinger the position which he was unjustly denied and to compensate Electrician T. Aulinger for each day that a junior employee occupied the position to which Mr. Aulinger was entitled, commencing with September 1, 1982 and ending when this claim has been resolved.

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 Claimant held seniority rights as a Journeyman Electrician with a seniority date of April 5, 1971 in the Carrier's Milwaukee, Wisconsin Mechanical Department. Due to a realignment of forces, the Claimant was displaced from his position as a Shop Electrician, effective September 1, 1982. Prior to his actual displacement, the Claimant sought to displace a Junior Electrician in the Shop Maintenance Department.

Before he was allowed to do so, R. Foley, Superintendent of Maintenance requested to see the Claimant in order to determine if he was qualified for the Electrician's job in the Shop Maintenance Department. In their initial meeting, the Claimant requested that a union committeeman be present for the interview. Superintendent Foley complied with the Claimant's request and another meeting was held at which Local Chairman G. Schulz was in attendance along with the Claimant and Superintendent Foley. At the meeting, Superintendent Foley asked the Claimant "as to his qualifications in displacing" the position in the Maintenance Department and showed him a copy of the bulletin for the job. The Claimant said that "he thought he could answer the qualifications of the bulletin." Superintendent Foley then asked the Claimant what his maintenance background consisted of, and the Claimant replied that he would refuse to answer any questions. Moreover, Local Chairman Schulz stated that the bulletin should be answered "by seniority only" and that the Carrier has "never asked for qualifications." Due to the Claimant's refusal to answer questions, Superintendent prohibited the Claimant from displacing the Junior Electrician in the Maintenance Department.

Rule 17 of the Agreement, in relevant part, provided as follows:

"Except as mutually agreed to, seniority of employees covered by this agreement, shall be confined to the point employed. In making reduction or filling vacancies, ability being sufficient, seniority will apply."

Clearly, Rule 17 indicates that a Senior Employee will be given preference if he possesses sufficient ability to perform the job. Under this type of provision (also known as a modified seniority clause) it is necessary to determine only whether the employee with the greater seniority can in fact do the job. Comparisons between bidders are unnecessary and improper and the Senior Employee will be entitled to preference even though a Junior Employee possesses greater skill and ability for the job. These principles also govern the application of the Memorandum of Agreement dated May 1, 1976 which, in relevant part, states:

**** it is agreed that when forces are reduced***
employees affected may place themselves according
to their seniority, provided they are qualified to
perform the work of the position."

Thus, the preference will be given to the Senior Employee provided he is qualified to perform the work of the position. Under both Rule 17 and the Memorandum of Agreement "seniority only" will not entitle an employee to be awarded the position.

Turning to the merits, it is true that the Claimant has been employed by the Carrier as an Electrician for eleven (11) years and had "electrical experience" prior to joining the Carrier. However, as a Shop Electrician, he was required to perform electrical work on locomotives and their related components. Such work is to be distinguished from the qualifications set forth in the copy of the bulletined position. The qualifications or duties of an Electrician in the Maintenance Department are set forth as follows:

*** maintenance construction, line work, trouble shooting and all other electrical duties as assigned. Applicant must be able to climb, have a valid Wisconsin driver license and be available for emergency overtime trouble calls. Applicant must also be familiar with local electrical codes."

In light of the different duties of a Shop Electrician in the Mechanical Department and an Electrician in the Shop Maintenance Department, the Claimant's sufficient ability or the fact that he is qualified in the Mechanical Department does not mean that he has sufficient ability or that he is qualified in the Shop Maintenance Department. Moreover, the Claimant is rated as an Electrician because he meets the criteria set forth in Rule 70. However, satisfying the criteria contained in Rule 70 is of no weight in the application of Rule 17 and the Memorandum of Agreement dated May 1, 1976. Were it otherwise, it would eliminate the phrase "ability being sufficient" in Rule 17 and the phrase "provided they are qualified to perform the work of the position" in the Memorandum of Agreement. An employee's general occupation, in and of itself, does not confer sufficient ability or provide the qualifications necessary for a particular job within the occupation.

Contrary to the position of the Organization, the Claimant, under Rule 70 does not have a right to show that he was qualified for the position in question within a reasonable period of time. Rule 70 provides a trial period in order for an employee to be rated as an Electrical Worker. It is undisputed that the Claimant is qualified as an Electrical Worker under Rule 70. However, there is nothing in Rule 17 or the Memorandum of Agreement dated May 1, 1976 that requires a trial period to demonstrate sufficient ability or qualifications to perform the work of the bulletined position.

The Organization contests the Carrier's right to conduct an interview of the Claimant to determine whether he had sufficient ability or the qualifications for the job in question. It is the Board's opinion that Superintendent Foley's attempt to interview the Claimant was fair and reasonable and did not violate the Agreement. It should be pointed out that since Rule 17 and the Memorandum of Agreement is silent as to how and by whom the determination of sufficient ability or qualifications is made, the Carrier is entitled to make the initial determination, subject to challenge by the Organization on the ground that the Carrier's decision was unreasonable under the facts, capricious or arbitrary. See for example, Second Division Award No. 1118. Moreover, it may very well be that the Carrier has "never asked for qualification." The language of Rule 17 and the Memorandum of Agreement is clear and unequivocal, concerning sufficient ability and qualifications to perform the work of the position. Accordingly, no matter how well established a practice may be, it is unavailing to modify the plain and unambiguous words used by the parties in their Agreement.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1985.