

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10843  
SECOND DIVISION Docket No. 10413  
2-D&RGW-MA-'86

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

(International Association of Machinists and Aerospace  
( Workers

Parties to Dispute: (

(Denver & Rio Grande Western Railroad Company

Dispute: Claim of Employees:

Under the provisions of Rule 31 of our current agreement, this Committee, representing the Machinists, Helpers, and Apprentices at Denver and Bond, Colorado, claim a violation of Rule 15, Filling New Positions or Vacancies, Supplement L, paragraph 3, pages S-75; Rule 27, Seniority; and other existing rules applicable.

RELIEF REQUESTED:

This Committee claims all overtime at 1 1/2 times the regular machinists' rate acquired during Machinist Mr. R. R. McDaniels (emp #199307) appointment to Bulletin No. 35, in favor of Machinist A. M. Alcorn (emp #31773) who was the most senior bidder on this bulletin. And Bulletin No. 35 be awarded to Mr. Alcorn. This being a continuing claim.

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.

This Claim is on behalf of Machinist A. M. Alcorn who established seniority on July 16, 1975. The Organization protests the Carrier's awarding of a bulletined position to a Junior Machinist on January 28, 1982. The Bulletin, No. 35, read:

"There is a vacancy for one Machinist to work as Work Equipment Road Machinist, 7:30 A.M. to 4:00 P.M. and to work in Work Equipment Shop 7:00 A. M. to 3:30 P.M. when not on road work. \* \* Successful bidders must possess a valid Colorado Driver's License, six (6) months experience in work equipment or equivalent outside experience."

The Organization disputes the propriety of imposing a six month experience requirement and asserts this ignores the "fair trial" requirement of Rule 15 (c). In essence, the Organization contends Rule 15 (a) requires the Carrier to provide a job applicant with a "fair trial" and that Rule 15 (c) outlines the procedures to be followed should the employee fail to qualify after being given a "fair trial". The Rule is set out in its entirety, as follows:

"Rule 15 - Filling New Position and Vacancies

- (a) In filling new positions or vacancies in the respective crafts, the oldest employee in point of seniority bidding on bulletin thereunder shall, if sufficient ability is shown by fair trial, be given preference in filling such positions or vacancies.

Note: Assignments of employees in charge of wrecking crews, or as wrecking engineer, will not be considered as vacancies under this rule, and employees for these jobs will be selected by the Management in accordance with the established practice.

- (b) All new positions and vacancies shall be bulletined for five (5) days before permanently filled.
- (c) An employee exercising his seniority under this rule, after a fair trial, failing to qualify, shall be permitted to displace only the youngest employee in his craft. In case a new position or vacancy is filled in accordance with this rule, and the applicant fails to qualify, the next applicant in order, qualified to do the work, will be assigned to the position.
- (d) If there are no applicants under the bulletin, or if those applying are not sufficiently qualified to do the work, the position will be filled by the assignment of junior employee qualified to do the work.
- (e) Employees exercising seniority rights under this rule will do so without expense to the company.
- (f) Copy of application filed under a bulletin shall be given to the Local Chairman, if desired.

- (g) Employees returning from leave of absence, vacation, or furlough desiring to exercise seniority, must do so within five (5) days after return to service."

From the above, it is evident that in filling new positions or vacancies, the Senior Bidder will be given preference "if sufficient ability is shown by a fair trial." Rule 15 (c) also refers to the exercise of seniority after a "fair trial." Rule 15 (d) could not be clearer. If those employees applying are not sufficiently qualified to do the work, the "position will be filled by the assignment of junior employee qualified to do the work."

The parties are reminded Agreements and Rules must be viewed as a whole or sum of the parts. Accordingly, our review of Rule 15 fails to persuade us the term "fair trial" mandates such an opportunity after the posting of a Job Bulletin. Obviously, even an apparent senior qualified bidder may be disqualified, and Rule 15 (c) underscores that in such a case "the next applicant in order, qualified to do the work, will be assigned to the position." When read in conjunction with Rule 15 (d), the parties' intent could not be clearer.

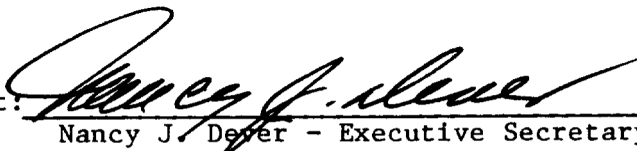
The Carrier is the judge of demonstrated ability as long as that exercise of judgment is not arbitrary or capricious. The demonstration of ability is the "fair trial". Necessary qualifications are obtained through job experience and training. The reasons advanced by the Carrier for establishing certain criteria for the Road Machinist position have not been rebutted. On the contrary, the evidence establishes the qualifications required are reasonable and in accordance with the Carrier's right to fairly determine if the applicant possesses the ability to perform the work in question.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1986.