

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10948  
SECOND DIVISION Docket No. 10618  
2-D&RGW-F&O-'86

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

(International Brotherhood of Firemen and Oilers  
Parties to Dispute: (  
(The Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Mr. John Greeley, Station Wagon Driver, Denver, Colorado was denied hourly wage differential when arbitrarily disqualified as Station Wagon Driver.

2. That, accordingly, the Denver and Rio Grande Western Railroad Company, be ordered to compensate Mr. Greeley for payment of the wage differential between Laborer and Station Wagon Driver, at the pro rata rate, eight (8) hours per day, five (5) days per week, beginning January 21, 1983 and continuing until settled and to re-establish him as a qualified Station Wagon Driver.

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 employes 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 was employed by the Carrier as a Station Wagon Driver beginning in 1979. The position of Station Wagon Driver involved the transport of Train and Engine Crews, Engine Hostlers, Mechanics, Company Mail, parts and tools between the Carrier's various properties in Denver, Colorado. This appeal centers on Claimant's disqualification from the Station Wagon Driver's position which caused Claimant to exercise his seniority to another Laborer's position in Denver.

The procedural matters raised by both parties are, after careful consideration by this Board, rejected due to their lack of merit. The Organization does not propose at this level of appeal either that Claimant's dis-

qualification was disciplinary in nature requiring an Investigation, or that a Claim for interest is now before the Board for determination. The Board finds that the alleged time-limit Rule was not violated by the Organization in the presentation of this Claim and the Awards cited by Carrier do not require us to hold otherwise.

This Board has on many prior occasions held that it is the Carrier's right to determine an employee's fitness and qualifications for a particular position. Second Division Award No. 7415. The scope of this management right was distilled in Second Division Award No. 8449, as follows:

"Carrier correctly argues that is it within Carrier's right to establish reasonable standards of fitness and ability among its employees for purposes of hiring, promotion, and job assignment. This particular right is a fundamental managerial prerogative [sic] which has been upheld by this Board and by other Boards in awards which are too numerous to enumerate herein. Suffice it to say, however, that the essence of these awards supports the proposition that said managerial right may be limited by specific contractual language, by the existence of a clearly established past practice, or by considerations of the unfairness or unreasonableness of management's actions".

The Organization's arguments and Submission to this Board in the instant case are based upon the unfairness or unreasonableness of Carrier's actions, i.e. that Claimant's disqualification was arbitrary, unjust and premised on complaints from unnamed persons. There is no contention that Claimant did not receive a fair trial at his position. Carrier, however, is not required by contract or past practice to name employees who have complained about Claimant's work performance, or to provide similar evidence of Claimant's inability to perform his duties in the challenged position in order to take the action of disqualification challenged here.

Claimant's seniority, which initially permitted him to successfully bid on the bulletined Station Wagon Driver position, did not guarantee his employment in that position. Rule 12(c) of the Agreement states, in pertinent part: "In filling new positions or vacancies ability and seniority will govern; ability being sufficient, seniority will prevail".

Unlike the facts in Award No. 8449 upon which the Organization relies, the Carrier's finding of the Claimant's inability in this case to properly perform his work assignment is supported by discipline he received as a Station Wagon Driver prior to the challenged disqualification. The evidence of record is undisputed that Claimant bid on and was assigned a position as a Station Wagon Driver in 1979. The evidence indicates Claimant was suspended in 1979-1980 for approximately a two month period. This suspension was based upon proof of the charge of carelessness in the performance of his duties when

he drove a vehicle through an unprotected railroad crossing and the vehicle was struck by a switch engine. Claimant returned to his full-time position as a driver after his suspension until April, 1982. Due to problems with lateness, laying off and careless driving, it was suggested by Claimant's Foreman that he bid for a relief driving position in the hope such a position would afford an opportunity for Claimant to "straighten out" unspecified personal difficulties he was experiencing at the time. Claimant worked the relief position until December 17, 1982, when he was permitted to replace another employee as the full-time Station Wagon Driver on a trial basis.

The record before us, as was the case with Award No. 8449, is very sparse indeed. The Board finds, however, that Carrier's General Locomotive Foreman and the exchange of correspondence in the record sufficiently demonstrated that the Claimant failed to improve his un rebutted record of poor driving habits. Claimant's disqualification from the Station Wagon Driver position was neither unfair, unreasonable nor an abuse of Carrier's management right.

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 6th day of August 1986.