

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Cleaner Roger A. Cook was denied seniority as a set-up carman dating from March 30, 1981, when the Carrier violated Rules 14, 28, 145, 147 and the Memorandum of Agreement concerning Non-Discrimination dated May 1, 1977.

2. That the Chicago and North Western Transportation Company be ordered to award Coach Cleaner Roger A. Cook a promoted seniority date as a set-up carman, and seniority lost as a Carman Helper dating from March 30, 1981, plus the difference in the rate of pay that he was deprived of account being denied promotion from Coach Cleaner to Carmen Helper to a Provisional Set-up Carmen, until this claim is settled. Also, that Carrier's officers David Schmidt and Daniel Lopez be properly reprimanded for their actions in this case.

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.

Claimant was initially hired as a Track Laborer on September 6, 1977. On May 1, 1978, Claimant became a Coach Cleaner at the California Avenue Repair Facility. On three separate occasions, (March 24, 1980, September 9, 1980 and March 30, 1981) Claimant took the exam to qualify as a Carman. On three separate occasions, Claimant was told by the General Car Foreman, the Shop Foreman, and the Superintendent, that he did not pass the exam. The test battery is a validated exam scored and maintained by the Carrier's Personnel Department.

On January 18, 1984, Claimant received a copy of his service record. That record indicates that on March 30, 1981, Claimant qualified as a Carman. The Carrier asserts that the entry in the service record indicating that Claimant qualified for the Carman position was in error and that he, in fact, failed to pass the exam on three separate occasions. The Carrier further maintains that the service record involved is a document maintained at the employe's facility and describes work related activities such as injuries, disciplinary actions, transfers, etc., and the record involved is not a part of the employe's personnel file which contains tests administered and their relative scores.

On February 7, 1984, Claimant filed a charge with the Equal Employment Opportunity Commission making the same factual allegations as contained in this Claim and further claiming that the failure to promote him to Carman was based upon his race and religion. On July 27, 1984 the EEOC made a determination that there was no reasonable cause to believe that the allegations of race and religious discrimination were true. Claimant was given 90 days to institute a lawsuit if he desired. He did not do so.

The Organization claims that the Carrier violated Rules 14, 28, 145, 147 and the Non-Discrimination Memorandum of Agreement dated May 1, 1977.

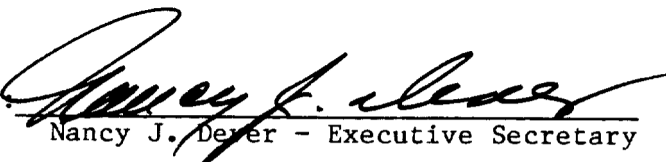
Upon a close review of the record herein, we are of the opinion that the Organization has not met its required burden of proof. At best, all that we are shown is that there was an erroneous entry made on Claimant's service record. There is no dispute that Claimant took the qualifying exam on three separate dates and was told each time that he failed to pass the exam. The Carrier maintains that the records of the exams substantiate those results. There is nothing in the record to show other than an erroneous record entry on Claimant's service record. No Rule violations have been demonstrated much less any showing that Claimant was discriminated against on the basis of his race or religious beliefs.

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 15th day of October 1986.