

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Louisville & Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville and Nashville Railroad Company has denied Carman J. E. Thomas his right to operate the Louisville Wrecker since October 17, 1980, as stated in the Master Mechanic's letter of December 28, 1981.

2. Accordingly, the Louisville and Nashville Railroad Company should be ordered to:

- (a) rescind the Master Mechanic's letter of December 28, 1981, and
- (b) allow Carman Thomas the position of Wrecker Engineer in line with his seniority.

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 employees 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, a Lead Carman, is the most senior member of the Carrier's Wrecking Crew stationed at Osborne Yard, Louisville, Kentucky. Claimant's seniority date is February 1, 1956.

Due to the retirement of a Wrecker Engineer, the Carrier bulletined the job on October 13, 1980, and subsequently awarded the position to Claimant. On October 31, 1980, the Carrier bulletined a "New Position" advertised as Wrecker Engineer and Groundsman, which was awarded to another who is junior to the Claimant and who is listed as "number 14" on the Seniority Roster.

Two (2) separate Wrecks occurred on December 16 and 17, 1981. On both, the Louisville Wrecker was called, and the Claimant was assigned as Engineer. However, after working only a few hours on each day, the Claimant was removed (allegedly because of poor work performance) and was replaced by the junior Carman who performed the majority of the remaining Wrecker Engineer work.

As a result of the aforestated incident(s), a Claim was filed on January 27, 1981, which contended that the Carrier's action was a violation of seniority and bulletining Rules.

A conference on the matter was held on April 14, 1981, at which time it was agreed by the General Chairman and Director of Labor Relations that, due to the numerous errors which had been committed by the Claimant while operating the Wrecking Crane, he would be required to requalify as a Wrecking Engineer, and that he ". . . would be permitted to operate the Wrecker when conditions were such that there would be only limited danger, such as clean up operations after clearing of derailments." Numerous such opportunities were afforded to the Claimant; however, in the opinion of the Wrecking Foremen who were on the scene during these various opportunities, the Claimant failed to safely operate the Wrecker. On December 28, 1981, Claimant was disqualified as a Wrecking Engineer by the Master Mechanic; and on February 6, 1982, the Carrier abolishing the Claimant's Wrecking Engineer position. Said disqualification/abolishment is now the basis of the instant dispute.

The Organization's basic position in this controversy rests upon Carrier's alleged violation of Rules 18 and 29 of the parties' Controlling Agreement which, in pertinent part, read as follow:

"Rule 18
Bulletining Vacancies

18(a) When new jobs are created or permanent vacancies occur in the respective crafts, the senior employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such jobs. All new jobs or vacancies will be bulletined. Copy of bulletin to be given the Local Chairman. Bulletin must be posted five days before new jobs or vacancies are filled. Bulletins will be posted immediately when it is known position is to be vacant or new job to be created.

* * *

18(d) In the event that it is definitely known that the senior applicant is not qualified, and the management and committee representing the respective craft mutually agree such to be the case, such employee shall not be assigned the position.

* * * * *

Rule 29
Seniority

- (a) Seniority of each employee covered by this agreement will begin from the date and time the employee starts to work."

* * * * *

In support of its position, the Organization contends that the Claimant was the senior employee and was qualified to perform as Wrecker Engineer; and has demonstrated his competency on a variety of Wreckers since originally qualifying in 1964. Still yet further on this same point, the Organization offers affidavits of several members of the Louisville Wrecking Crew which, according to the Organization, attest to the Claimant's qualification to serve as Wrecker Engineer.

In counterpoint to the Organization's contentions, the Carrier maintains that Rule 18(a)'s exception to the awarding of bulletined jobs based solely on strict seniority (i. e. - "sufficient ability" must be shown "by trial" before a job candidate can fully qualify for any position) is applicable in the instant dispute. According to the Carrier, the Claimant was given a "trial" during which he demonstrated that he did not possess "sufficient ability" to perform the requisite duties of Wrecking Engineer. To bolster this contention, the Carrier cites ten (10) separate operating errors which were committed by the Claimant during the first three (3) months of his tenure as Engineer.

Continuing, the Carrier also argues that it is under a legal duty, as defined by the Federal Employers' Liability Act, to insure that its operations are conducted in a safe manner and ". . . to provide a safe place to work for (its) employees." This obligation, the Carrier argues, was recognized by the Organization when the General Chairman agreed to a further qualification period for the Claimant.

As its last significant area of argumentation, the Carrier urges that, in reaching a determination in this dispute, the Board should be guided by the principle which was enunciated in Second Division Award 6760 which, in pertinent part, reads as follows:

"We have frequently held that Carrier has the right to assign work and to determine the job content of positions, except as restricted by the express terms of the Agreement * * * Likewise, we have upheld the propriety of Carrier tests to determine qualifications on ability * * * the applicable language of Rule 19 requires that senior employee be given 'preference' but it does not mandate that they be awarded a bid-in assignment in every case irrespective of possession of the minimal qualifications for the job * * *"

The Board has carefully read, studied and considered the complete record which has been proffered in this case, and is persuaded that the Carrier's position, as presented, is correct and, therefore, must prevail. The rationale for this determination is that the Board is persuaded that the Carrier's actions herein were predicated upon a legitimate concern for the safety of the Ground Crew when the Claimant was operating the Wrecking Crane. In reaching this conclusion, the Board is guided by the principle which was cogently and succinctly articulated in Second Division Award 9764 as follows:

" . . . the Board finds no rule or circumstance to diminish the well understood right of the Carrier to determine the qualifications of an employee for operation of a derrick. The position involves to an unusual degree the safety of other employees and the high possibility of damage to equipment and property. There is no showing here that the Carrier acted in an arbitrary, capricious or discriminatory manner in exercising its judgment that the Claimant was not qualified after training and a limited amount of experience."

In the instant case, the Carrier documented the Claimant's repeated errors while operating the Wrecking Derrick and further documented that he was given an opportunity to requalify. No evidence of record exists to demonstrate or even suggest that the Carrier exercised its judgment in an arbitrary, capricious, discriminatory or bad-faith manner. On the other hand, however, the record does amply demonstrate that the Carrier's singular concern was for the safety of the Ground Crew and the proper performance of the Wrecking work. The Organization, simply stated, has failed to prove that the Carrier acted otherwise.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 10th day of December 1986.