

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12916
Docket No. 12796
95-2-93-2-167

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

(Brotherhood Railway Carmen Division
(Transportation-Communications International
(Union A.F.L. - C.I.O.
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'Carrier') violated Rule 27-1/2, 37, 38, and 183 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969), when the carrier denied Carman C. R. Hale, ID#2623149 (herein 'claimant') contractual rights to employment effective November 13, 1992.
2. Accordingly, the claimant is entitled to be compensated for all lost time starting November 13, 1992 and continuing until he is restored to service with each day being accredited to a specific calendar date. Also that he be compensated for all rights accruing to other employees as a condition of employment including, but not limited to, vacation rights, seniority rights, and all health and welfare and life insurance benefits now in effect."

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 employee 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 dispute at issue involves a determination as to whether the Claimant is qualified to work in a position as a "Clean, Test and Repair Carman" in the Valve Room of the Raceland (Kentucky) Car Shop.

On June 21, 1991 the Carrier posted the following bulletin notice:

"Beginning Monday, August 26, 1991, there will be 29 "Clean, Test and Repair" Carman positions in the Valve Room. In order for a Carman to hold one of these positions, he must be qualified; therefore, beginning Saturday, June 29, 1991, those Carman with sufficient seniority to hold one of the 29 positions, who is not now qualified, can work in the Valve Room in order to try to become qualified.

General Foreman Fred W. Petty and Local Chairman Phillip Boyles have an up-to-date list, by seniority, of those who are qualified and the job they are qualified for.

If you wish to become qualified, you are to give your name and Id. No. to Local Chairman Phillip Boyles by Thursday, June 27, 1992."

The Claimant did not express an interest for such a position at that time, i.e., June 1992. However, after the Claimant was furloughed on August 27, 1992, he did seek to be called for work as a Carman in the Valve Room. Interest in such a position was also said to be the result of the Claimant subsequently becoming aware that employees junior in seniority were working in the Air Brake Shop. Thus, the Claimant filed a request pursuant to Rule 27-1/2 that he be called from furlough for work in the Air Brake Shop. The Claimant's request was rejected or denied by the Carrier.

The Organization says that the Claimant worked in the Air Brake Shop in 1989 and 1990, and submits that his name is shown on an employee list, dated June 18, 1991, as qualified to both build and tear down valves. Thus, the Organization says that the Claimant asked the Local Chairman to contact the General Foreman to determine why he was not being called for work in the Valve Room. It says that the General Foreman said that the Claimant was not qualified for such work because there now was a "certification process" and that the Claimant was not so certified for the work.

In regard to the Claimant being on the list of employees qualified to work in the Air Brake Room, the Carrier argues that the said list was prepared for another purpose and that it erroneously shows the Claimant as qualified to build and tear down valves. It says the Claimant had previously been disqualified from building all but "W" valves and that while he worked for a time tearing down valves, he left the Air Brake Room in 1990.

The Organization requested that this Carrier argument be stricken from the record in accordance with recognized Board procedures because said argument was not made during the handling of the instant claim on the property.

The record before us does not show that this Carrier argument was made prior to the claim being docketed for presentation to the Board. For this reason, we have disregarded it in reaching our decision.

The Organization also directs attention to a meeting held on October 21, 1992 between the Local Chairman and the General Foreman, a Foreman and a Labor Relations Officer. It submits, as supported by correspondence of record, that at this conference it was agreed that the Claimant would be permitted to go to the Air Brake Shop on his own time to refamiliarize himself with the work and to learn any new procedures that the Carrier may have instituted since he last worked in the Shop. Further, it was understood that at such time as the Claimant was secure in the belief that he could perform such work, that he would so inform the Carrier and that the latter would assign an individual to observe the Claimant for a day. Then, if it was determined that the work being performed was of a proper quality, the Claimant would be permitted to work in the Air Brake Shop.

The Local Chairman said he agreed with the arrangement with the concurrence of the Claimant and because like arrangements had worked in the past when there was a dispute over the qualifications of an employee.

The Claimant had a physical examination on October 23 and thereafter reported at 7:00 A.M. on October 26, 1992 to start his refamiliarization in the Air Brake Shop. At this time, he was confronted by a Supervisor, who, with the concurrence of the General Foreman, refused to allow the Claimant to start his refamiliarization program until such time as the Chief Medical Officer passed upon the results of the physical examination.

On November 13, 1992, after having been informed that he had now been physically cleared to work, the Claimant reported to the Shop. For reasons not set forth in the record, the Supervisor is said to have refused to let the Claimant go to work and did not do so until ordered by the General Foreman. Thereafter, the Supervisor reportedly refused to test valves worked on by the Claimant and told the Claimant that he could not work in the Shop. The Claimant reportedly took his protest about such treatment by the Supervisor to the General Foreman who, in turn, is alleged to have confirmed what the Supervisor told the Claimant, telling the Claimant that he could not work in the Shop since he had not been "quality tested" and had not worked during the "shop certification process."

There is no question, as the Carrier argues, that numerous decisions of this Board have held that it is a Carrier's right, except as otherwise relinquished by Agreement, to determine an employee's fitness and qualifications, and that employees do not have a demand right to a position on the basis of seniority. At the same time, it is recognized that numerous past Awards have likewise held that a Carrier's decision is not final and conclusive relative to such matters where it is evident that the Carrier actions are totally unreasonable.

In the instant dispute, the Carrier's actions in holding the Claimant not to be qualified do not seem to the Board to have been reached in concert with the spirit of the understanding made in joint conference that the Claimant be given the opportunity to demonstrate that he was qualified. Rather, it appears from the record that the Claimant's immediate supervisory officials were insensitive to the resolution of such issue in the manner determined at the said conference, and arbitrarily denied the Claimant the opportunity to refamiliarize himself with the valve work and to show that he could perform the work required of the positions in the Valve Room.

The Board will therefore direct that the claim be remanded to the property for such disposition as may be realized in keeping with the understanding which the parties had entered into in joint conference on October 21, 1992. In this respect, the Board will hold that the Carrier is obliged to ensure that its supervisory officials in the Raceland Car Shop afford the Claimant a fair opportunity to show whether he has the requisite qualifications to work in the Valve Room.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.