

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13126
Docket No. 12900
97-2-94-2-47

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

(Brotherhood of Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Western Fruit Express Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Western Fruit Express Company violated the terms of the current Agreement, and in particular Rules 14, 15, & 24 of the contractual Agreement effective July 1, 1945 and revised October 2, 1972, when they arbitrarily denied Cicero, Illinois Carman Frank Estrada a Supervisory position advertised in Bulletin 2-91.

2. That, accordingly, the Western Fruit Express Company be ordered to compensate the Claimant, F. Estrada, the difference between what he is receiving as a Western Fruit Express Carman and the Supervisory rate of pay, which at the time of the bulletin was advertised as a salary of \$2,618.73 per month. This claim is for each and every working day commencing December 09, 1991 and continuing until he is rightfully placed on the Supervisory position he was denied.”

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 were given due notice of hearing thereon.

By letter of December 6, 1991, Claimant applied for Supervisor of Car Cleaning and Car Repair advertised by Bulletin 2-91. There is no dispute that having received no bids from applicants on the Supervisor's Seniority Roster for the position, the Carrier appointed a junior Carman to the position. The Organization argues that the Claimant was the senior applicant and was qualified for the position. The Organization provided evidence of qualifications. The Organization maintains that the Carrier violated the Agreement when it failed to properly award the position under Rules 14, 15 and 24 of the Carman's Agreement.

The Carrier denied any Agreement violation and the applicability of the Carman's Rules in this dispute. The Carrier asserted that the position was properly awarded in full compliance with Rule 3(e) of the Supervisor's Agreement.

The Board has reviewed the Rules and evidence presented on property. The Organization focuses upon Rule 14 which states in part:

"When new jobs are created or vacancies occur in the respective departments, the oldest employee in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them."

The Organization argues that since there were no applicants from the Supervisor's ranks, the language of Rule 14 supra, governs. These applicants were Carman and Rule 3(e) is not applicable. Under the Carman's Agreement the "oldest employee" with "sufficient ability" should have been given the position. Claimant was the senior employee and clearly possessed sufficient ability.

The Board has reviewed the Carman's Agreement and the Rules herein contested. Rule 14 applies to positions in the "respective departments" and Rule 24 lists no applicable department for Supervisors. The Supervisor's Agreement was listed as governing on the bulletin. There is no evidence of record that supports the

Organization. Carrier's arguments are persuasive that Rule 3(e) governs as this position was not bulletined under the Carmen's Agreement. Rule 3(e) states:

"The selection of appointees to new positions or vacancies, including promotions to positions coming under this agreement, shall meet with the approval of the General Mechanical Superintendent and shall be based upon the following qualifications:

- (1) Fitness for position**
- (2) Seniority"**

From the Rules and evidence, the Board must conclude that the applicable Agreement is the Supervisor's Agreement and the applicable Rule is Rule 3(e). Accordingly, that Rule is clear that the determining factor is the approval of the Superintendent based upon the first criteria of "fitness for position." The record of evidence includes the letter of the Superintendent stating that the junior employee was better qualified in fitness for the position. The Superintendent stated that the junior employee could better handle responsibility; make spot decisions; had greater experience in trailer body repair; and better communications skills. The decision to appoint the junior applicant was also made because he had refrigeration repair background which the Claimant lacked.

Accordingly, the Rule is clear. There is nothing in this record to demonstrate a failure of the Carrier to give consideration to the Claimant within the applicable Rule. Claimant did not meet with the approval of the Superintendent based upon his fitness for the position. Nothing restricts the Carrier under the applicable Agreement to choosing the most qualified applicant. The claim must be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 10th day of June 1997.