

Award No. 1735
Docket No. 1601
2-L&N-BM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Boilermakers)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier unjustly dealt with Boilermakers W. W. Adams and C. C. Teague when they denied them the assignment to Bulletin Jobs No. 303 and 310 respectively, which they were entitled to by virtue of the fact they were the senior bidders.

2. That accordingly the Carrier be ordered to assign aforesaid Boilermakers to these jobs and compensate them the difference between the rate they were paid and the differential rate they were entitled to and would have earned if properly assigned, retroactive to date improper assignments were made.

EMPLOYEES' STATEMENT OF FACTS: On June 28, 1950 and August 2, 1950 Bulletins Nos. 303 and 310 respectively, were posted at the South Louisville Shop #3, boiler department, for boilermaker arc welders, copies of which are submitted herewith and identified as Exhibits A and B.

Boilermakers W. W. Adams and C. C. Teague, hereinafter referred to as the claimants, bid for these jobs, Adams for Bulletin Position No. 303 and Teague for Bulletin Position No. 310.

When the scheduled time ran out on these bulletins the carrier assigned W. E. Lee to Bulletin Position No. 303, whose seniority number and date is 98, 10-22-36, a copy of this assignment is submitted herewith and identified as Exhibit C. On Bulletin Position No. 310 the carrier assigned C. R. Sweat, whose seniority number and date is 145, 9-15-20, a copy of this assignment is submitted herewith and identified as Exhibit D. The seniority number and seniority dates of the claimants are as follows which is confirmed by copy of seniority roster of 1950, submitted herewith and identified as Exhibit E.

W. W. Adams — No. 90 10- 5-36

C. C. Teague — No. 85 9-28-36

The claimants have performed welding work while in the employ of the carrier which is confirmed by statement made by the claimants dated 10-20-51 submitted herewith and identified as Exhibit F.

jobs. All new jobs or vacancies will be bulletined. Copy of bulletin to be given the local chairman. Bulletin must be posted 5 days before new jobs or vacancies are filled. Bulletins will be posted immediately when it is known a position is to be vacant or new job is to be created."

The carrier explained to Messrs. Teague and Adams that the trial they would be given to demonstrate their ability was the preparation of a "weld test plate." For many years this has been the carrier's standard means for determining the ability of applicants for the position of boilermaker-welder. They declined the carrier's offer, whereupon it became necessary for the carrier to assign the jobs to junior qualified men. As stated in the foregoing, for many years the carrier has required applicants for boilermaker-welder positions to demonstrate their ability by preparing a weld test plate, and this claim is the first protest of record at South Louisville that the preparation of a weld test plate is not a fair trial of an applicant's ability.

POSITION OF CARRIER: There is nothing complex about Rule 18(a) quoted in the foregoing. Its pertinent part says:

" the senior employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such jobs. . . . "

The carrier has underscored the word "filling" to emphasize that it is the act of "filling" the job (that is, of assigning the applicant to it) which is made contingent upon the applicant's demonstrating, by trial, that he has sufficient ability to perform the job. It can not be stressed too strongly that the rule does not say that the job will be filled by assigning the senior applicant, who should then be given an opportunity to qualify. The carrier offered the claimants full opportunity to enter upon the trial contemplated by the rule. They refused; therefore, if they have not the jobs they wish, it is a matter of their own doing and a result of their unwillingness to demonstrate—by trial—their ability to do the job. The carrier is ready, now, and has been right along, to give them a trial at welder's work. If claimants can produce a satisfactory test plate in this trial, they will stand for assignment to welder positions in accordance with their seniority.

Award No. 622 of this division clearly supports the carrier's position in this case. The claim should be 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 employe or employees involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

This claim involves Boilermakers W. W. Adams and C. C. Teague. The organization contends carrier violated its agreement with them when it failed to assign claimants to the positions covered by its bulletins Nos. 303 and 310, they being the senior bidders thereon. Adams bid on the job of Boilermaker-Arc Welder covered by bulletin No. 303, to which carrier assigned W. E. Lee, and Teague bid on the position of Arc-Welder covered by bulletin No. 310, to which carrier assigned C. R. Sweat. Admittedly each of the men carrier assigned to these respective positions was junior in service to the claimant who bid thereon.

Each of the bulletins contained a provision that any applicant, if requested to do so, must make a test plate by arc welding. When carrier requested the claimants to meet this requirement they refused to do so. The question arises, can carrier impose this requirement on the senior bidder as a condition precedent to assigning him to the bulletined position on which he has bid?

Rule 18 (a) of the parties' agreement, in so far as here material, provides:

"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."

This rule, standing alone, would clearly give carrier the right to test, by trial, the sufficiency of any applicant's ability to meet the requirements of the position on which he has bid and to do so before filling the job by assigning such applicant thereto. However, the test must be reasonable and relate to the duties of the position. The test here provided meets these requirements.

However, in so far as here material, section (d) and (e) of this same rule provide:

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

"(e) An employee assigned to a position under this rule will lose his right to the position he left, and failing to qualify on the new position, will displace the junior employee in his respective classification; . . ."

The language quoted from these two sections of Rule 18 give support to the organization's contention that claimants should have been placed on the positions, because of their seniority, and then, after a fair trial, if found not to be qualified they could and should have been removed.

We think these several provisions of Rule 18 leave some doubt as to just what procedure the parties intended should be followed. In view of this ambiguity we must necessarily look to the practice which the parties either acquiesced in or accepted as indicating what they understood the Rule to mean.

A welder holds a responsible position and performs responsible work. As already stated the test required of these claimants, and which they refused to take, was reasonable and sufficiently related to the duties necessarily incident to the position they had bid for that it can be said it would fairly determine their ability to perform them. It was a test which, for a long time, has been used by this carrier in order to determine the qualifications of those seeking to become welders.

That the organization agreed that carrier, under this Rule, could require this test as a condition precedent to an applicant's right to be assigned to the position for which he had bid is fully evidenced by General Chairman P. G. William's letter of April 6, 1945 addressed to L. L. Morton, Director of Personnel of carrier. Therein he stated:

"But we are compelled to meet with your requirements in qualifying for the position as boilermaker at Hazard, therefore we are agreeable to having this opportunity to qualify by welding some test plates in order that . . . may exercise his seniority rights to the position as boilermaker at Hazard, Ky."

We find carrier was acting within the parties' rules applicable thereto when it requested claimants to take and pass the test prior to assigning them to the positions for which they had respectively bid. Claimants having refused to take the test thereafter had no claim to the position by reason of their bids.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1954.