

Award No. 1908

Docket No. 1754

2-FEC-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman L. M. Quimby should have been assigned to the position covered in the vacancy bulletined on September 28, 1953 in the Roadway Shops due to the death of Carman-Carpenter B. G. King, St. Augustine, Florida.

2. That Mr. D. D. Oesterreicher, who was employed to fill the aforesaid vacancy, did not meet the four year qualification requirement provided for in the said current agreement and he, therefore, should be removed from such position.

3. That the carrier should be ordered to assign Carman L. M. Quimby to the aforesaid position with pay for all living expenses incurred retroactive to the force reduction made in the Mechanical Department at St. Augustine, Florida, when it became necessary for him to work away from his home point and move to New Smyrna Beach, Florida, all due to having been unjustly deprived of his right to the position in question.

EMPLOYEES' STATEMENT OF FACTS: A bulletin, dated September 28, 1953, was posted showing the vacancy of Mr. B. G. King (deceased) at the roadway shops. The bulletin shows that copy was furnished R. G. Smith, general chairman of the carmen.

A bulletin, dated October 20, 1953, was posted showing that D. D. Oesterreicher was employed to fill the vacancy caused by the death of B. G. King.

Under date of October 21, 1953 the carmen's local committee addressed a letter to D. L. Brett, foreman, roadway shops, asserting that Rules 14, 146, and 147 had been disregarded.

Foreman Brett replied under date of October 30, 1953, advising that he had awarded the position to the applicant whom he considered best qualified.

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 employes 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.

Employes assert that Claimant Quimby should have been assigned to fill a vacancy in the Roadway Shop of the Maintenance of Way Department instead of Oesterreicher.

Carrier seeks dismissal of the claim because of failure to appeal within thirty days from the decision of the Engineer Maintenance of Way to the Chief Operating Officer as the highest official designated to handle such matters, pursuant to the requirements of Grievance Rule 27. Employes deny that the Chief Operating Officer had been so designated. Carrier shows that appeal was made to that official on a prior claim, and belatedly here, but fails to show or even explicitly to assert any designation. We think its showing is not sufficient.

Employes contend that claimant should have been assigned under the terms of Rule 14, reading in part:

“When . . . vacancies occur in the respective crafts, places will be filled by qualified employes in the service, if available . . .”

Rule 14 is a seniority rule entitled “Filling vacancies—seniority”

In a sub-paragraph it refers to “an employee exercising his seniority under this rule . . .” We must conclude that a “qualified employe” means an employe having seniority rights to bid for the vacancy.

Claimant was employed in a different department,—the Maintenance of Equipment Department—with entirely separate and non-interchangeable seniority rights, so that admittedly he held no seniority in the Roadway Shop to permit him to bid for the position, and we think he was not entitled thereunder to preference.

Employes further contend that Oesterreicher should be removed because he was not qualified by having “four years practical experience at carman’s work”, under Rule 146.

While not unambiguous, this rule taken by itself might well bear the construction as requiring such experience while employed as a railway carman. But the analogous rules of the Agreement as to other trades require only requisite experience at the trade, without limitation as to nature of employment. Since several trades are combined under the carmen classification, it is evident that the term carmen’s “work” instead of “trade” might well have been employed with the same intent without limitation as to the industry where acquired. Employes have not challenged Oesterreicher’s experience as asserted by the carrier.

Further, as appears from carrier’s exhibit M, N & O the rule has been so construed on the property as to Roadway Shop of the Maintenance of Way Department and carrier has rejected the specific request for construction as now sought by employes.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1955.