

Award No. 4844

Docket No. 4723

2-ACL-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That, numerous provisions set forth in the manual for Testing and Qualifying Welding Operators, issued by the Atlantic Coast Line Railroad, January 1, 1962, are in direct conflict with the applicable rules of the Current Agreement and if made effective would constitute an amendment or supplement to same.

(b) That, the Atlantic Coast Line Railroad be ordered to rescind the above Manual and to assign Carman Welder P. L. Stone, who was disqualified under the provisions of said Manual, to the Welder's job which he bid on April 8, 1963 and paid the difference between carmen and welder's rate (6 cents per hour) beginning April 16, 1963 and continuing with the violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Welder P. L. Stone, hereinafter referred to as the claimant, was employed as a Helper Apprentice by the Atlantic Coast Line Railroad, hereinafter referred to as the carrier, October 10, 1950.

"Form of Indenture", dated August 16, 1954, signed by Shop Superintendent E. L. Spicer was furnished the claimant when he completed his apprenticeship, this form specified that the claimant had served his apprenticeship in the Waycross, Georgia Shops of the carrier, and that he was a qualified carman who had received the required training in general freight car work, Air Brake Work, Mill Work and Welding. Upon the completion of his apprenticeship claimant was employed as a carman by the Atlantic Coast Line Railroad Company at Waycross, Georgia. No complaint concerning his work or qualifications was registered for approximately nine (9) years. On April 8, 1963 Claimant bid on a welder's position and carrier refused to honor his bid.

Bulletin No. 141 was posted on April 4, 1963, advertising five Carman Welder jobs in Waycross Shops, bids were received from the following Carmen:

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 claim is that by requiring a test for welders, the Carrier has violated and in effect unilaterally amended the Agreement, and particularly Rules 32(c), 401 and 402 thereof. In the Employees' Rebuttal the specification is extended to Rule 12, which is the seniority rule. Sub-division (j) of that rule provides as follows:

"(j) Seniority as mentioned in any of the rules of this agreement will govern when the employees desiring to exercise such rights have the ability to perform the duties required, but the Management will not be required to place employees on vacancies or new jobs if they are not qualified."

Rule 12(j) does not provide how such ability and qualification shall be determined by Management, and does not forbid examinations for the purpose.

Rule 32(c) provides that:

"(c) An employee who has been in the service of the Railway thirty (30) days will not be dismissed for incompetency."

This rule is not applicable since the Claimant has not been dismissed, but has merely been found by a standard and uniform test not to be qualified as a welder.

Rule 401 and 402 are merely the Carmen's Qualifications and Classification of Work rules. The latter includes "oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work as provided in Rule 17," which provides that none but mechanics and apprentices in their respective crafts shall perform this welding; but nothing in the Rules provides that all carmen shall be awarded welders' assignments without regard to ability or qualifications as required by Rule 12(j).

The examination requirement in no way violates, amends or conflicts with the provisions of the Agreement, but on the contrary implements and gives effect to them.

The Employees do not contend that the examination was unfair or improper, or that Claimant actually passed it or was in fact qualified to perform the work; but they contend in effect that the Carrier could not question the Claimant's qualifications because it issued to him in 1954 an apprenticeship form indenture signed by a shop superintendent, which stated that his service during apprenticeship consisted of "General Freight Car Work, Air Brake

Work, Mill Work and Welding." But the Carrier states, and the Employees do not show to the contrary, that Claimant's work has been solely as a general car repairer and has not included welding; that he did not receive the full apprentice training, but was merely classified as a helper apprentice so as to complete the hours he lacked to establish seniority as a carman; that he did not in fact have any of the welding experience specified for apprentices, and that the statement in the indenture was erroneous.

Under Rule 12(j), Claimant's welding qualification was a question of fact for Management, and there is no indication that it was not fairly and justly determined. Even former apprentices with the proper apprentice training in welding must establish their ability to perform the work satisfactorily in order to be entitled to welding assignments under this Rule. It is undoubtedly true that in the absence of regularly assigned welders such work is sometimes of necessity performed by carmen without welder's seniority; but that fact cannot defeat the Carrier's right under Rule 12(j) to require proof of ability and qualification before awarding a welder's regular assignment, with the higher pay to which that rating is entitled under the Agreement.

It has long been recognized that in the performance of its service the Carrier has all powers not forbidden by law nor relinquished by contract, and that it necessarily has the right to determine in good faith the qualifications of its employees. Rule 12(j) is a recognition of those principles.

In Award 396, the Third Division found,

"The seniority rules of collective agreements are designed to safeguard fundamental rights of the employees, and it is important that these rules be observed carefully and in good faith. It is also important, however, that the carrier be not deprived of such discretion in choice of personnel as is reserved to the management by these very rules.

* * * While seniority is thus to be given controlling recognition where the necessary qualifications are present, it is clear that the right of seniority is not established as an absolute right — that faithful discharge of duties, capacity for increased responsibility, and sufficiency of ability are also relevant considerations. * * * This does not mean, of course, that the Carrier's right to determine questions of fitness may be exercised arbitrarily, to defeat the letter or spirit of the agreement; but neither does it vest in this Board authority to substitute its judgment for that of the carrier where the rule is applied in good faith and on the basis of substantial evidence of want of fitness on the part of the particular employee who deems himself aggrieved."

In Award 2469, this Division said,

"The agreement does not specifically provide for written tests to determine qualifications, and neither does it specifically prohibit such tests. To determine whether or not an employee is qualified is usually a matter of judgment by management. Management may use any number of methods to aid it in forming a judgment, and so long as the methods used are fair and reasonable, and administered without

discrimination, we cannot substitute our judgment for that of management. We find in this case that management did not exercise its judgment in an arbitrary or discriminatory manner."

The Carrier's requirement of an examination to determine the Claimant's qualification for a welder's assignment was not in conflict with the Agreement, nor a unilateral amendment of it, and the Claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.