

**Award No. 4979  
Docket No. 4861  
2-D&RGW-MA-'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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Machinists)**

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

(a) That under the controlling Shop Crafts' Agreement, the Employees of Machinist Craft at Helper, Utah, claim that the provisions of Rule 16, (d), items 3, 4 and 10, having for their purpose proper procedure for filling positions of working foremen, have been arbitrarily violated by the Carrier account of it assigning a junior applicant to the position of working foreman at Sunnyside, Utah, on February 1, 1964;

(b) That as a consequence of such arbitrary assignment the Carrier be ordered to pay Machinist Fred Voll, senior bidder, the difference between working foreman's rate and his regular machinist's rate for all time held off the working foreman's job, and properly assign Machinist Voll to the position of working foreman at Sunnyside, Utah.

**EMPLOYEES' STATEMENT OF FACTS:**

(a) On January 25, 1964 bulletin No. 1264 containing the following was placed on the bulletin board at Helper, Utah:

"Bids will be received in office of undersigned up to 3:30 P.M. January 31, 1964 for position of one (1) Working Foreman at Sunnyside, Utah.

Only Machinists on Helper seniority roster are entitled to bid on this position.

Please submit copy of your bid to your Local Chairman.

/s/ R. A. Coleman  
General Foreman"

sors and employes not covered by all of the rules of the union contract. One of the provisions of this plan is that the employe involved must retire from the service of the Carrier on the first day of the month following his 65th birthday. Inasmuch as Mr. Voll was already past sixty-five at the time the position at Sunnyside was bulletined, he was not eligible for the position.

In view of the foregoing, claim remains declined.

Yours truly,

/s/ E. B. Herdman  
E. B. Herdman  
Director of Personnel

EBH:pf"

This case stripped of everything else is reduced to the question of whether the carrier must extend to working foremen all of the courtesies and privileges of subordinate officers along with the accompanying responsibilities and requirements of such courtesies and privileges. If the position of the employes is upheld in this grievance it will be interpreted that it is the position of System Federation No. 10 that under the circumstances involved the carrier need not apply to working foremen its supplementary pension plan along with its qualifying compulsory retirement age. At the present time carrier has several retired working foremen coming under the provisions of Rule 16 (d) 10 who were required to retire at the age of sixty-five under this policy. This list indicates the following:

Name	Working Foreman	Date of Birth	Retired	Comments
B. F. Schenfeld	Chama	3-23-1888	1-9-54	Before Agreement
John W. Wach	Thistle	3-09-1902	1-16-62	Disability
N. J. Spearman	Durango	10-01-1896	11-1-61	
A. M. Macartney	Durango	9-30-1897	10-1-62	
C. Don Waring*	Sunnyside	10-15-1915	11-12-63	Deceased

\*Widow is drawing supplementary pension

There are a number of men on these working foremen positions from crafts other than the machinists who will also be affected.

Carrier has been handling assignments and retirement of working foremen according to its position as outlined herein since agreement was reached involving Rule 16 (d) October 15, 1954. Naturally it would seem in the best interest of the majority that the carrier not be forced to change the present handling.

**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.

Parties to said dispute waived right of appearance at hearing thereon.

Paragraphs (a), (b), (d)2, (d)9 and (d)10 of Rule 16 provide in part as follows:

“(a). Mechanics in service will be considered for promotion to position of foreman.

(b). It is the policy of the company to promote its own men, and only when competent employees cannot be found in the ranks or will not accept promotion will it be the disposition of the company to vary from this policy.

(d) 2. \* \* \* vacancies for working foremen will be bulletined \* \* \* and the senior qualified applicant will be assigned.

(d) 9. This rule does not guarantee that the positions of working foremen at the points named in this rule will be maintained. \* \* \*

(d) 10. Mechanics assigned to the position of working foreman will continue to be accorded the privileges, courtesies, etc., usually accorded subordinate officials.”

The question is the scope of the word “qualified” in Rule 16(d)2. Does it merely mean “qualified to perform the work”, or “qualified to hold the position?” Since the application of the word is not limited in any way, and since the rule relates to appointment to the position of working foreman, it must mean qualification to hold that job.

A qualification of the Carrier for these supervisory positions, is an age limit at 65 years, implemented by a retirement pension arrangement. Nothing in the Agreement limits the Carrier’s right to maintain this age qualification for working foremen. On the contrary, Rule 16 (d) 10 provides that working foremen shall have the privileges usually accorded to subordinate officials, which necessarily means that they are subject to the conditions under which the privileges attach.

Any other construction would mean that while the Carrier has the undoubted prerogative to establish and maintain an age qualification for supervisory personnel and to enforce their retirement at age 65, it cannot apply the qualification to employees, otherwise qualified, who already have passed that age: — in other words, that the Carrier cannot enforce the age qualification as to Claimant, but must appoint him, and let him establish his own policy in that respect. Nothing in the Agreement warrants such conclusion.

The Employees contend that in view of the provision of paragraph 8 of Rule 16 that no other rules or contracts will be applicable to working foremen, the Carrier cannot enforce the age qualification against Claimant. But Rule 16 provides that the employees be qualified, without limiting qualification to conditions other than age.

Paragraph 4 of Rule 16 provides that the question of qualification, if it arises, will be determined by the Carrier's representative and the General Chairman; but that means that the fact question shall be thus determined,—not that the Carrier's prerogative to set reasonable qualifications for supervisory positions requires his concurrence. In a letter to the General Chairman the Director of Personnel wrote:

“ \* \* \* one of the qualifications of a working foreman who is considered the equivalent of a subordinate official is that he be under 65 years of age. \* \* \*

Inasmuch as Mr. Voll was 66 years old in November 1963, he does not meet the qualifications of age and, therefore, was not the 'senior **qualified** applicant' in accordance with Rule 16 (d) 2. The previous reasons advanced by the Carrier in handling this case are affirmed.”

The General Chairman did not dispute Claimant's age. He merely replied that the working foremen's age qualification and pension were not provided by the Shop Craft Agreement, whereas the material point in that respect was that the Carrier did not relinquish this managerial prerogative by the Agreement.

It is not apparent how the Employees would be benefited by an award denying the Carrier's managerial right to prescribe a uniform, good faith, age qualification for supervisory personnel, or freeing an over-age applicant from its established application. As above quoted, paragraph 9 of Rule 16 provides that “This rule does not guarantee that the positions of working foremen at the points named in this rule will be maintained;” and the record shows that the position in question was discontinued as of September 16, 1964, and that Claimant retired from the service six weeks later. A sustaining award would at most give Claimant the pay differential for a few months; on the other hand, a finding that by Rule 16 the Carrier has relinquished the managerial right to maintain its age qualification for working foremen would certainly discourage the maintenance of those positions, which the Agreement permits but does not require.

However, regardless of that consideration, this Division finds nothing in Rule 16, or elsewhere in the Agreement, which limits the Carrier's managerial prerogative of establishing and maintaining in good faith an age qualification for supervisory personnel.

#### 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 November, 1966.

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