

Award No. 4984
Docket No. 4921
2-MONGLA-MA-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE MONONGAHELA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Monongahela Railway Company has violated the working agreement, particularly, the note of Rule 19, when they assigned Mr. T. H. Guard an Electrician to supervise a Machinist on second trick, working hours of 6:00 P.M. to 2:00 A.M. on April 1, 1964 at the South Brownsville Enginehouse, Brownsville, Pa.

2. That accordingly the Carrier be ordered to remove Mr. T. H. Guard as Supervisor of Machinists and assign a Supervisor from the Machinist Craft.

3. That the claim presented in favor of Machinist L. S. Marker for the difference in the daily rate of pay between a Machinists' rate and Foreman's rate, for each and every day worked by the Electrician T. H. Guard as foreman, on the above position.

EMPLOYEES' STATEMENT OF FACTS: On March 1, 1964, Foreman J. E. Webb, working 6:00 P.M. to 2:00 A.M. notified management he was taking his fifteen (15) days vacation starting March 11, 1964 to March 31, 1964, and then was going to retire April 1, 1964.

The claimant, L. S. Marker, has filled the foreman's position as extra when needed.

On February 27, 1964, a letter by the claimant, L. S. Marker to Master Mechanic Mr. A. Kovac, requesting that he be considered for the foreman's position now in question, was set forth. A carbon copy was also sent to Superintendent Mr. C. H. Siebart.

The General Foreman, F. L. Thompson, requested L. S. Marker to assume the position temporarily, from March 11, 1964 to March 31, 1964, until such time that the position of foreman would be decided by the management and

938 and 979). However, even in the absence of such express provision, it is properly a managerial function to assess ability, merit and fitness of applicants. (See Third Division Awards 2350, 4918, 5238, 5417 and 5966). In the exercise of that function, Management must act in good faith and its judgment may be neither arbitrary nor capricious and Management must consider standards reasonably related to performance of the position under consideration. Once fitness and ability of an applicant have been found by the Carrier to be lacking, the burden rests upon the Claimant to overcome that finding by substantial and competent proof. (See Third Division Awards 203, 2491, 3273, 3469 and 4040)."

Also, in Award No. 1211 of the Fourth Division, Referee Coburn, the board stated:

"It is a widely recognized and established principle of labor-management relations that management has the sole prerogative of determining the competence, fitness and ability of its employees unless that right has been modified or abrogated by the terms and conditions of the effective collective bargaining agreement. The awards of this and other Divisions have repeatedly recognized and supported this principle. (Nos. 741, 938, Fourth; Nos. 96, 489, 2491, 2458, 2990, 6143, Third Division)."

In summary, carrier reiterates its position that the shop crafts agreement was not violated when Mr. Guard was appointed to the position of foreman at South Brownsville Enginehouse. Carrier is charged with the responsibility to select the individual who, in carrier's opinion and judgment, is best qualified in all respects to meet the requirements and responsibilities of a supervisory position. This responsibility has not been delegated, by contract, to any other party nor shared with any labor organization. It continues to rest with management.

An award sustaining the claim of the employees in the instant dispute would remove these discretionary powers from the realm of management.

Carrier respectfully submits, therefore, that the claim is without merit and 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 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 were given due notice of hearing thereon.

Petitioner's complaint is that an electrician rather than Claimant, a machinist, was promoted to a position of foreman which supervises machinists but no electricians. When the vacancy arose, Carrier first offered the position to a machinist named Johnson but he declined. It then considered Claimant as well as a number of other employes for the vacancy but finally decided that the electrician should be awarded the promotion.

It is elementary that management possesses wide latitude and authority in filling supervisory positions, particularly where as here the position is not even covered by a collective bargaining agreement. The wisdom of that principle is quite apparent when Carrier's tremendous responsibilities for safe, efficient and economical operations are borne in mind.

Broad managerial powers of that type nevertheless can be restricted by contract and our examination of the applicable agreement, particularly the Note to Rule 19 thereof, persuades us that, to some extent, Carrier has limited its right to select supervisory employees.

Rule 19, in pertinent part, reads as follows:

"(a) Mechanics in service will be considered for promotion to positions as foremen.

* * * * *

NOTE: As vacancies occur or new positions are created for Shop Craft supervisors having supervision over mechanics and apprentices, mechanics of the respective Shop Crafts, if obtainable, shall be assigned to such positions. Where such supervisor has supervision over more than one Shop Craft he will be a mechanic of one of the Shop Crafts supervised. * * *"

The language quoted above was obtained through the process of collective bargaining and is not without significance, although we do not construe it to imply that an available machinist has an unqualified right to a foreman position namely because it involves the supervision of machinists. See Award 4525. If in the present case, Petitioner had offered no persuasive evidence in reply to Carrier's explanation that it had considered Claimant for the disputed position, the claim might have been denied. Here, however, — and this is a compelling consideration — Petitioner has shown that Claimant had filled supervisory positions on a number of occasions without adverse criticism, so far as the record indicates. In the light of these facts, it was incumbent upon Carrier to present some evidence to show why, despite the Note to Rule 19, an electrician and not Claimant was selected to fill the vacancy. Carrier failed to come forward with proof in that regard and we can not, in this posture of the record, validly accept the bare assertion that Carrier considered the Claimant's qualifications and found the electrician more suitable for the position. A contrary result would, in our opinion, be arbitrary and deprive the Note to Article 19 of any real meaning.

The claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1966.

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