

Parties to Dispute:

Penn Central Transportation Company

1. The Penn Central Transportation Company has placed in supervisory positions men who are not qualified under Rule 19 of the current agreement.
2. That the Penn Central Transportation Company be ordered to compensate the men listed below (as Claimants) for the difference in wages received by them and that payed the men listed as foremen. This claim is based on a forty (40) hour week, the effective date being August 18, 1969:

Foremen

C. Roberts
N. LaPorte
L. St. John
F. Archambeault

The claim in this dispute arose from the promotion of four employees effective June 18, July 1, and two on August 13, 1969 to the position of foreman. The claim was filed by letter dated August 19, 1969. Carrier contends, and we agree, that the claim with respect to two of the promotions was not filed in timely fashion in accordance with Rule 35 of the Agreement. Rule 35 provides that claims must be filed within 10 calendar days of the occurrence complained of.

Petitioner claims that there was considerable confusion at this new location and it was difficult for the local committee to obtain information. Although we appreciate the problems on the property and are reluctant to foreclose claims on technical grounds only, we cannot condone a sixty day lapse when the ten day rule is explicit.

The following sections of Rule 19 are relevant to this dispute:

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

Note 1 - 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 Organization contends that (1) the men who were promoted were not qualified Machinists and (2) Claimants, who were qualified Machinists, were not considered for the positions. By these two actions, Carrier is alleged to have violated Rule 19.

An examination of Note 1 above does not reveal a mandatory requirement that supervisors must be journeymen machinists in order to supervise apprentices and mechanics of that craft. The words "if obtainable" in the Note above are clear and indicate that there are no requirements per se for supervisors of any one Shop Craft. Petitioner in its second allegation argues that Claimants, who were qualified, were not considered for the positions of supervisor. The record indicates, without contradiction, that Carrier offered the new positions of Foreman to fourteen Machinists at the location. Four of these men accepted (two later returned to the craft) and ten refused. Claimants were not offered the promotions because Carrier did not believe they were qualified for the positions.

Was Carrier's conduct in filling the supervisory vacancies contrary to the provisions of Rule 19? We think not. The right to select employes and make judgments as to their competence is solely a function and responsibility of management, unless expressly limited by contract. (See Award 4525 and Third Division Award 3151 among others). Even more emphasis must be placed on management's unimpaired right to select supervisors, who are in fact part of management. Unless there are specific Rule proscriptions or management has acted in an arbitrary and capricious manner, thus prejudicing employes rights, there can be no invasion of management's prerogative to assess competence of its employes for purposes of promotion among other things. In the dispute before us there is no evidence to show that Claimants were not "considered" for promotion, as required by Rule 19 (a). There certainly is no rule support for the proposition that they should have been selected for the promotions on any basis. The claim must be denied.

A W A R D

Claim dismissed in part and the remainder denied in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1973.