

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Incorporated violated Rule 13 of the controlling Agreement in effect on the Burlington Northern, Incorporated when they disqualified Carman Welder A. Beilke as a carman welder, a position he has held for twelve (12) years.
2. That accordingly, the Carrier be ordered to compensate Carman Welder A. Beilke in the amount of the difference between a Carman Welder's rate of pay and a Carman Mechanic's rate of pay, with all subsequent wage increases from September 14, 1972 until properly reassigned to the position of Carman Welder on the day shift, with Saturday and Sunday rest days.

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.

Claimant is a regularly assigned Carman at Carrier's Havre, Montana repair track. The Organization contends that claimant worked as a welder for 12 years until September 7, 1972 when he was improperly disqualified. They contend that he was disqualified in contravention of Rule 13(g) in that Carrier discriminated against claimant in administering the welding test; that he was not disqualified within 30 days as required; and, that there is no provision in the contract for periodic reexamination of welders.

While Carrier concedes that claimant was, in fact, assigned to a carman-welder position in 1960, they claim that in 1968 he was disqualified as a welder although he continued to receive the welder's rate of pay. In order to qualify again for a welder's position, in 1972 claimant was given a qualifying test which he failed to pass. Carrier maintains that at all times they acted in a fair and reasonable manner toward claimant.

We believe it is now well established by all Divisions of the National Railroad Adjustment Board that Carrier, in the exercise of its managerial discretion, has the right to determine an employee's ability for a position in the absence of a contractual proscription to the contrary. And in so determining an employee's ability, Carrier may require the employee to take a test provided the test is not unreasonable or discriminatory, and is fairly administered. We find that the welding test given claimant meets this criteria. The contract did not preclude Carrier from giving claimant a welding test in order to determine his ability as a welder. In administering the test, Carrier did not act in an unfair or discriminatory manner toward claimant. Carrier stands ready to allow claimant to retake the test whenever he desires so it cannot be said that it has acted arbitrary or unreasonable. Furthermore, other carmen at Havre have been required to take a welding test prior to appointment as a welder so the Organization cannot accuse carrier of unreasonable conduct.

It may well be, as the Organization avers, that schooling or instructions are needed at Havre to teach carmen welding, but failure of the Carrier to furnish same certainly does not constitute a contractual violation. Finding no contractual prohibition to the test Carrier gave claimant, and further concluding that the test was fairly administered, we cannot find any support for the Organization's position and it must therefore be denied.

A W A R D

Claim denied.

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 4th day of March, 1975.