Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7376
SECOND DIVISION Docket No. 7296
2-SPT-CM-'77

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company, hereinafter referred to as the Carrier, on October 20, 1975 knowingly violated Rules 23, 19(e), 26, 31, and 40, of the MP&C Department Agreement, when the Carrier refused employment to Mr. John Laguna and Mr. Felix J. Sava, Carmen, hereinafter referred to as Claimants.

2. That Claimants be compensated at the pro rata rate of pay in existence at the time for each and every day from October 20, 1975, when the Claimants were refused employment and could be working, account of said agreement rules violations.

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.

Claimants F. Sava and J. Laguna, both employees with about 32 years service, were on furlough status from the Carrier's Sacramento heavy car maintenance plant, where both held seniority as carmen.

In mid-October 1975, furloughed carmen from Sacramento were called to fill vacancies at Roseville, California, about 15 miles from Sacramento. At Roseville, Carrier maintains a yard and repair tracks with facilities for inspection and repair of freight cars, as well as a train yard for inspection of cars and air testing before trains depart.

The basis of the claim before us is that both claimants were not offered employment at Roseville, whereas other furloughed carmen at Sacramento, with less seniority, were allowed to work at Roseville.

The grounds advanced by Carrier for not transferring claimants was that they do not read or write English -- a prerequisite for the work at Roseville.

In support of the claim, Petitioner cites Rules 23 and 19(e), quoted below:

"EMPLOYEES TEMPORARILY TRANSFERRED

Rule 23. If additional men are needed in excess of those available under Rule 29(d) /REDUCTION AND RESTORATION OF FORCES/, qualified men at other points, who are laid off will, in accordance with their seniority, be permitted to work in the class and craft at the nearest point where additional men are needed, subject to return to home point, when notified, with seniority unimpaired. Such transfer to be made without expense to the Company, except that such employees will be furnished free transportation."

"BULLETINS - NEW JOBS AND VACANCIES

Rule 19(e) In filling new jobs and vacancies, recognition must be given to the responsibility of maintaining efficient service. After assignment, if the qualifications of an employee to perform the work is questionable, the local officer, local committee and employee concerned will confer and endeavor to impartially compose the question without prejudice to the employee before involving Rules 38 /GRIEVANCES/ or 39 /DISCIPLINE - SUSPENSION - DISMISSAL/."

The Organization argues that claimants' 32 years of service demonstrates their competence; that claimants' service as carmen for 7 and 10 years, respectively, proves their qualifications which entitles them to transfer rights based on Rule 23; that both claimants had previously worked at Roseville and that Sava had been assigned by bulletin dated September 23, 1969 at Roseville as Relief Car Inspector; and that at Sacramento, instructions and orders, verbal and written, are in English. Accordingly, the Organization concludes, claimants should have been afforded opportunity to demonstrate their ability to perform the work at Roseville.

Carrier asserts that the claimants were not qualified to perform the work required at Roseville, because neither claimant could read or write English, a knowledge of which is essential to performing train yard carmen duties. These duties require the preparation of reports, reading instructions and information shown on cars being inspected, and understanding of U. S.

Department of Transportation regulations dealing with safety appliance standards and power brake requirements. Since the claimants were not qualified, no violation of the Agreement was incurred by employing junior furloughed carmen at Roseville.

Carrier states that Rule 23, relied on by Petitioner, provides for the temporary transfer of employees laid off provided they are qualified to do the work at other points where they hold no seniority. Rule 23 is a specific rule, which under well recognized principles enunciated by this Board, prevails over general rules.

Rule 19(e), also cited by Petitioners,is inapplicable to claimants, Carrier maintains, since they do not hold seniority at Roseville. Moreover, Rule 19(e) recognizes Carrier's responsibility to give "efficient service;" hence, Carrier reserves the right to determine an employee's fitness and ability for the requirements of a job, unless its decision is arbitrary or capricious--an action not proved by Petitioner.

Carrier adds that current carmen duties at Roseville have changed since claimants last held assignments at that location, involving preparation of reports and reading instructions and information which claimants previously were not required to do because of their inability to read or write and to receive or pass on verbal instructions in the English language. Carrier's repeated assertions that claimants were unable to demonstrate an ability to read or write English have not been denied or refuted, nor has Petitioner furnished proof of such ability.

A careful review of the record leads to the conclusion that there was no violation of the Agreement in this case.

Under Rule 19(e), the filling of vacancies is subject to management's responsibility for providing "efficient service." Absent any restrictive language in the Agreement, management retains the right to determine what a job should consist of and, therefore, the desired qualifications for that job.

Determination of an employee's qualifications relates to a candidate's present qualifications at the time a vacancy exists and applicants bid or are entitled to consideration for such vacancy. "Qualified" as used in Rule 23 does not mean ability to qualify after further learning or experience on the job or after a trial period; it means possessing the required knowledge, ability, skill, or experience at the time an applicant bids for the job or is entitled to be considered for it. A trial period is not to enable a senior employee to become qualified, or at least to prove his contention that he is qualified -- unless the Agreement specifically so provides.

Only after management has made its decision, subject to any agreement restrictions or limitations upon its authority, that an employee fits the job; that is, he is qualified, a trial period tests whether such employee is fulfilling the job's requirements satisfactorily. In essence, management determination of qualification constitutes a condition precedent for a subsequent trial period, unless otherwise provided by agreement rules and provisions.

Carrier's right to set qualification standards is not restricted by the Agreement between the parties.

Rule 23 provides that laid off qualified employees, in line of seniority, will "be permitted" to work at their craft or class at points where vacancies exist. We find no automatic entitlement to such vacancies, irrespective of qualifications. Lacking evidence of arbitrary, capricious, or discriminatory action, we must conclude that Carrier exercised reasonable and honest judgment concerning the requirements of the job and claimants' qualifications for the particular job.

This Board frequently has denied claims of senior employees filed under language similar to that of Rule 23 herein, who were denied, transfers, promotions, or other job assignments because they lacked the necessary qualifications. Award 6760 (Second Division) and awards cited therein.

Under the circumstances at hand, the claim is without merit and must be denied.

A W A R D

Claim of employees 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 14th day of October, 1977.