

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: ( System Federation No. 18, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Boston and Maine Corporation

Dispute: Claim of Employees:

- (a) That the Boston and Maine Corporation violated the controlling agreement, namely Rule 13, Paragraph (c) thereof, beginning on August 11, 1975 and until Carman R. W. Lowe was returned to the Carman's position in question, at Lawrence, Mass., after being awarded same on March 5, 1976.
- (b) That accordingly the Boston and Maine Corporation be ordered to additionally compensate Carman R. W. Lowe at the Carmen's time and one-half rate of pay on a daily basis for all overtime accrued on the Carmen's position in question at Lawrence, Mass., beginning on August 11, 1975 and until claimant was returned to the disputed Carmen's position after being awarded same on March 5, 1976.

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.

At issue here is the meaning of the phrase "fails to qualify for the new position" in Rule 13(c).

The record indicates that on June 10, 1975, a one Hubert P. Brennan, a Carman, was assigned to the Roadman position at Lowell, Massachusetts. As a result of an incident with a Mr. G. V. Moore of G. V. Moore Lumber Co. on July 3, 1975, Mr. Brennan was prohibited by Mr. G. V. Moore from entering his property. After a hearing on July 24, Carman Brennan was removed from the Roadman position at Lowell on August 11, and displaced Claimant at Lawrence, Massachusetts on August 12, 1975. The position

held by Claimant at Lawrence, was formerly held by Brennan, and vacated by Brennan when he took the Roadman position at Lowell.

Now, Rule 13(c) states:

"An employee exercising his seniority rights for, or assigned on account of application, to a vacancy under this rule will lose his rights to the job he left. If after a fair trial he fails to qualify for the new position, he will have to take whatever other position may be open in his craft." (Emphasis added)

Now, in the record before us, Carrier's General Foreman clearly states that Carman Brennan "failed to qualify as a Roadman, but not as a Carman." (Emphasis added)

Thus, Brennan lost his rights to the job he left at Lawrence, and was required to take whatever position was open in the Carman craft, pursuant to the terms of Rule 13(c).

Carman Brennan could not perform all the duties of Roadman at Lowell since he could not enter the property of the G. V. Moore Lumber Co. It is irrelevant that this restriction was placed upon Brennan by an outside party, rather than Carrier.

As long as Carrier required the occupant of the Roadman position to enter the premises of the G. V. Moore Lumber Co., and Brennan was forbidden to do so, at the "request" of this lumber company, Brennan "failed to qualify" for the Roadman position.

Webster's Third New International Dictionary defines "qualify as follows:

"vi 1: to become fit (as for an employment): become capable: measure up to or meet a set standard or requirement."

Therefore, based on all of the foregoing, the Board finds that Carrier violated Rule 13(c) of the Agreement.

However, the second part of the Claim requesting time and one-half for overtime accrued on the Carman's position at Lawrence is very vague and indefinite. Petitioner only refers in the record to "lost numerous hours of overtime work at Lawrence," but there is absolutely no showing that any overtime was indeed worked. Consequently, we must deny that part of the Claim.

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Award No. 7411  
Docket No. 7336  
2-B&M-CM-'77

A W A R D

Part 1 of Claim upheld.

Part 2 of Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of December, 1977.

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