

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

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

Dispute: Claim of Employees:

1. That in violation of the current agreement the Burlington Northern, Inc. assigned Mr. James Clagett, a management trainee, to the position of Assistant Communications Supervisor at Lincoln, Nebraska, over Mr. W. T. Smoot Jr. Electronic Technician Communications Department.
2. That accordingly the Carrier be ordered to remove Mr. Clagett from his position and that he be replaced by Mr. W. T. Smoot, Jr.

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.

This is a dispute concerning Carrier's alleged failure to consider Claimant for promotion to the position of Assistant Communications Supervisor at Lincoln, Nebraska. Aside from all the procedural issues raised in this dispute we think the crux of the matter lies in Rule 13 of the Agreement, which merely states that "Mechanics in service will be given preference for promotion to appointive supervisory positions relating to their respective craft."

Under Rule 13 management is simply required to give employees such as Claimant preference. The rule does not mandate that such employees be promoted, leaving management the judge of fitness and ability. In a similar case, Referee Lieberman wrote in Award 6578:

"Was Carrier's conduct in filling the supervisory vacancies contrary to the provisions of Rule 19? We think not. The right to select employees and make judgments as to their competence is solely a function and responsibility of management, unless expressly limited by contract. (See Awards 4525 and Third Division Award 3151 among others.) Even more emphasis must be placed on management. Unless there are specific Rule prescriptions or management has acted in an arbitrary and capricious manner thus prejudicing rights, there can be no invasion of management's prerogative to assess competence of its employees 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."

Similarly, in this case, there is no basis or rule support for the claim and it must 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 25th day of October, 1978.