

JUN 4 1979

J. W. GOHMANN

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

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

Dispute: Claim of Employees:

1. That in violation of the current agreement, Shop Repairman Peter R. Bliss was arbitrarily denied a bulletined position, even though he was the senior qualified bidder on the position.
2. That accordingly the Carrier be ordered to award the position to the aforementioned Shop Repairman and that he be compensated in an amount equal to the differential in pay between that of Shop Repairman 1-D and Electronic Technician 1-A from date of initial claim and continue until adjusted.

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 dispute involves Claimant's fitness and ability to secure a position to which his seniority otherwise entitled him. Given the accepted principle that determination of an employe's qualifications rests with Carrier, Petitioner has the burden of demonstrating that the Carrier's decision was arbitrary and erroneous in order to prevail. Additionally, Petitioner must tender evidence that the Claimant has the necessary qualifications in order to properly exercise his seniority.

In this case Claimant had been awarded the Electronic Technician's position in question in 1974 and after a period of time he indicated that he did not feel qualified to fulfill the position and was returned to a Shop Equipment Repairman's position. When by Bulletin dated February 5, 1976 a similar position was advertised, a junior employe was awarded the position despite Claimant's bid. Carrier took the position that nothing had materially changed in the sixteen month hiatus and Claimant was still not qualified for the job.

Petitioner argues that Carrier's determination was arbitrary and unwarranted. Further the Organization states that Claimant was obviously qualified for the position and had voluntarily sought outside training in electronics which greatly enhanced his skills and ability. In addition it is urged that Claimant had been placed on the Class 1-A seniority roster, pursuant to a letter of understanding, and hence must have been, per se, considered qualified.

First it must be noted that we can find no provision in the applicable Agreement which provides that an employee holding seniority in a class must be presumed to have sufficient qualifications to perform the work of every position in that class. Such argument would, if correct, obviate most disputes concerning fitness and ability. This Board and others have held the contrary view that such presumption is unjustified (see Award 4933 and for example Third Division Awards 16546 and 1824).

The only proof of Claimant's qualification submitted by Petitioner during the handling of this dispute on the property consisted of records of his outside training activity as both a student and an instructor. The bulk of those experiences, however, preceeded 1974. The only later training encompassed four courses taken at the St. Paul Vocational Training Institute after 1974: "Electronic Calculator Repair"; "Supervisory I"; "SemiCond Memory System"; and "2 Way Radio". No indication of the relevance of any of those courses to the position of Electronic Technician was ever supplied by Petitioner. While it is evident that claimant is to be commended for his thirst for knowledge relating to his work, the fact of his taking the courses does not establish that he had the necessary qualifications for the position in question.

Carrier, in justification of its decision to disqualify Claimant, relied heavily on the observations of its supervisors. While Petitioner is correct in characterizing some of the statements made by the supervisors as irrelevant since they dealt with personal characteristics of Claimant, an examination of those statements reveals significant pertinent information. One statement indicated that Claimant's reasoning processes resulted in errors and his work had to be redone by others. Another statement indicated that Claimant was very sloppy and careless and "... has come very close to causing accidents that might have killed him and others around him." That statement indicated further that Claimant had a tendency to modify instructions resulting in many cases in the work having to be redone. A further statement said that (in addition to positive comments) his work on delicate electronic equipment is not good and "... in most cases a little sloppy". Further that supervisor commented that although Claimant understands very well how a device works, he does not have good results in repairing it. The final statement, which dates back to 1974 (and thus has less probative value) indicated that Claimant at that time was indifferent to his assigned responsibilities. Based on the information above, it is evident that Carrier had sound grounds for deciding that Claimant could not perform in the Electronic Technician's position.

Petitioner has failed to produce evidence in refutation of Carrier's conclusions and further has not shown that the decision was arbitrary or capricious. The relevance of observations by supervisors in determining qualification has been well established (e.g. see Third Division Award 21412). In addition to the lack of evidence referred to above, Petitioner has likewise failed to establish that Claimant was qualified for the position. We must conclude that there is no basis for interfering with Carrier's decision.

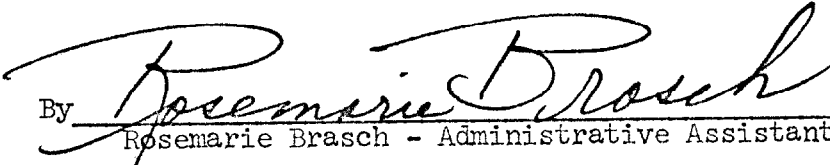
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of May, 1979.