

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 162, Railway Employees'
Department, A. F. of L. - C. I. O.
(Electrical Workers)
Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Company (Texas and Louisiana Lines), herein after referred to as the Carrier, did in fact, assign Mr. K. P. Blount to position No. 80, which is a Radio Equipment Installer position, by bulletin. He was the successful bidder in Seniority on this position, on January 29, 1979. The Carrier did in fact disqualify Mr. Blount from this position on February 2, 1979 in violation of the current agreement.
2. That accordingly, the Carrier be ordered to return Mr. Blount to position No. 80 and that he be compensated for all wages lost during the time held off this position commencing with February 3, 1979.

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.

Claimant was employed by Carrier as a Gang Lineman on October 23, 1972. While so employed, Claimant progressed from his hired-in position to that of Division Lineman; and, on February 16, 1976, as a temporary Radio Equipment Installer in Nacogdoches, Texas. Claimant established seniority while in each of these positions and at no time was Claimant ever disqualified from same.

Subsequent to his temporary assignment as Radio Equipment Installer in Nacogdoches, Carrier, believing that Claimant had not attempted to familiarize himself with equipment installer's work, abolished Claimant's temporary position and rebulletined it as a lineman's position. Claimant successfully bid on said new position and was awarded same on April 21, 1978. Thereafter, Claimant attended Elkins Institute and on September 9, 1978 he was granted his Second Class Radio License. During that same month, a Microwave Maintainer's position in Beaumont, Texas, was bulletined and was awarded to Claimant on September 13, 1978. Carrier

contends, at this point, that because Claimant expressed a desire to remain in Nacogdoches and because supervision believed that Claimant could not perform Microwave Maintainer job anyway, said job was upgraded and rebulletined as a Radio Equipment Installer's position on September 21, 1980, and was awarded to Claimant on October 4, 1978.

In December 1978, a Radio Equipment Installer's job, Position No. 80, was vacated in Valentine, Texas, and was rebulletined on December 26, 1978. Said position was described in Lineman's Vacancy Bulletin No. 185 as follows:

"In addition to work customarily performed by Equipment Installers, the duties of this position also include installation, maintenance, and repair of radio equipment, towers and antennas. Successful applicant must hold second-class or better radio license from the Federal Communications Commission."

While said position was being rebid, Carrier, on January 2, 1979, hired D. C. Williams, a new employee, to fill the position on a temporary basis. Thereafter Claimant successfully bid on this position and was assigned thereto on January 29, 1979. On February 2, 1979, however, Claimant was disqualified from said position. Subsequently, employee Williams, who had temporarily held the Radio Equipment Installer's job in Valentine for the period of January 1, 1979 to January 29, 1979, prior to Claimant's assignment thereto, was reassigned to this same position upon Claimant's disqualification; and Claimant was temporarily assigned to fill Williams' position as Radio Equipment Installer in El Paso, Texas.

Claimant contends that Carrier violated Rules 2, 13 and 17 of the parties' current agreement by discriminatorily and unjustly disqualifying him from Position No. 80, Radio Equipment Installer.

Specifically, Claimant charges that, though Rule 13 of the current agreement is silent as to what length of time constitutes a fair trial when an employee is qualifying for a new position, four (4) days, such as was the case in this dispute, cannot be considered as fair and equitable; particularly when, according to Claimant, employee Williams who was a new hire, was allowed twenty-one (21) days on that same job. In this same regard, Claimant's organization argues that a thirty (30) day trial period would be appropriate under the circumstances, and offers Second Division Award No. 7210 as supportive of this position.

As the second argument, Claimant charges that Carrier disqualified him from a position on which he had already qualified, given the terms and conditions of the current agreement and the regulations of the Federal Communications Commission.

Of particular note in this regard, Claimant contends that he has three (3) years seniority as a Class "A" Radio Equipment Installer and possesses a Second Class Radio License. Claimant further argues that if he were not qualified, why did Carrier wait three (3) years to make that determination; and, moreover, how could a new employee with apparently less training than he possibly be more qualified to perform a job which, as Carrier alleges, "is one of the toughest jobs on the system".

The third and final major argument presented by Claimant is that in cases of this nature Carrier assumes an affirmative defense and, having done so, Carrier must demonstrate "by probative evidence rather than self-serving statements that the defense taken is supportable and factual". Accordingly, Claimant contends that, in this dispute, Carrier has failed to substantiate its allegations by any documental evidence.

Carrier's position in this dispute is that Claimant, though an employee with three (3) years seniority in his classification, is not qualified to perform the duties of Position No. 80, Radio Equipment Installer.

Accordingly, Carrier maintains that in order for a company to properly maintain its operations, it must, of necessity, select and maintain as its employees only those who are competent to perform the skills and duties which are required of them. Thus Carrier contends that, absent any contractual limitation, it has the right to establish and maintain reasonable standards of fitness and ability among its employees, and when an employee demonstrates a lack of such qualities, then it is Carrier's prerogative to disqualify that employee from his position. Carrier further contends that such action should not be disturbed unless it can be shown that Carrier has acted arbitrarily and/or capriciously (See Third Division Awards 10419, 11914, 12433, 13465, 17141, 17646, 20361, 21035, 21784 and 21986); and Carrier denies such action in this instant case.

In support of its position, Carrier contends that Claimant was given a trial period in accordance with Rule 13, and, subsequently, he was judged to be unqualified to perform the duties of Position No. 80. Therefore, Carrier argues that absent any showing that its actions were in any way discriminatory or unfair, Carrier has the right to determine fitness and ability for the purpose of job assignment and/or promotion.

Lastly, Carrier argues that, without prejudice to its basic position herein, the remedy, if awarded, should not exceed three (3) day's pay because claimant was assigned to the same type of job at the same rate of pay in El Paso on February 5, 1979 following his disqualification; and, additionally, Organization's claim for 10% interest on back wages is improper since there is no rule in the parties' agreement providing for the payment of interest, and furthermore, numerous awards in the Second and Third Divisions, according to Carrier, support this position.

Carrier correctly argues that it is within Carrier's rights to establish reasonable standards of fitness and ability among its employees for purposes of hiring, promotion, and job assignment. This particular right is a fundamental managerial prerogative which has been upheld by this Board and by other Boards in awards which are too numerous to enumerate herein. Suffice it to say, however, that the essence of these awards supports the proposition that said managerial right may be limited by specific contractual language, by the existence of a clearly established past practice, or by considerations of the unfairness or unreasonableness of management's actions.

In this instant case, this Board is convinced that Carrier has not violated any of the specific terms of the parties' agreement, nor has Carrier violated any past practice as can be determined by the record. The matter of the fairness and reasonableness of Carrier's actions, however, is an altogether proposition, and because of this, the Board is compelled to support Claimant's position in this instant matter.

Carrier argues that Claimant is unqualified to perform the duties of Radio Equipment Installer, Position No. 80. In support of its charge Carrier maintains that Claimant's lack of qualifications is established by the appraisals of various supervisors who observed Claimant's work performance while Claimant was assigned in various classifications and also while Claimant was assigned to Position No. 80 during the period from January 29, 1979 to February 2, 1979. Carrier further maintains that the extent of its obligation, as specified in Rule 13, was to provide Claimant with a "fair trial" as directed by Referee Rose in Second Division Award No. 7210. Thus Carrier argues that it has met its contractual obligation to Claimant.

Insofar as the record is concerned, this is the entire sum and substance of Carrier's case.

Claimant, on the other hand, offers the fact that he has worked as a Radio Equipment Installer for approximately three (3) years, and, while so assigned, Carrier has not disqualified Claimant or otherwise reprimanded him for unacceptable or poor work performance. Additionally, Claimant offers that subsequent to his previous assignment he was granted a Second Class Radio License which is recognized by the Federal Communications Commission as qualifying Claimant to perform the type of radio repair work which is required in Position No. 80.

Admittedly, what Claimant offers as proof of his qualifications is somewhat sparse; and, moreover, Claimant may, in fact, be unqualified as alleged by Carrier. Be that as it may, however, Claimant's demonstrated quantum of proof is decidedly more superior than Carrier's mere assertions since Carrier has offered no factual evidence whatsoever in support of its contentions.

Of significant import in the above determination is the following, wherein Organization representative states and requests:

"We do not question the Carrier rights to qualify or disqualify, but we do question the rights of the Carrier to disqualify an employee who has already qualified on a position under the agreement and by Federal Law without showing just and sufficient cause, which this Carrier has not done. In view of this request, now, all the facts, tests, failures of his performance of duties, specific assignments in detail where he failed to perform such work. We shall expect this information in supporting documentary evidence to be furnished by this Carrier. Test, assignments shall not deviate from that which is required of all other employees in this status."

As the lengthy record in this instant dispute clearly demonstrates, Organization's requested documentation was not provided by Carrier, nor was it subsequently made a part of the record by Carrier on its own behalf. The only plausible conclusion for this Board to deduce from this development, inter alia, is that said documentation either was not maintained by Carrier, or was not supportive of Carrier's basic position. In either event, the absence of such documentation is the fatal flaw in Carrier's case; and to disqualify Claimant from Position No. 80, given this set of circumstances, is unfair and unreasonable, and, therefore, improper.

A W A R D

On the basis of the foregoing analysis and conclusion, Carrier is directed to offer Claimant a second trial to demonstrate his ability to perform the duties required of Radio Equipment Installer, Position No. 80. Said trial is to be governed by principles as posited in this instant award.


Backpay and restoration of seniority as well as the restoration of all other normally accrued benefits is also directed, in the event that Claimant has suffered any such losses during the period of his disqualification from February 2, 1979 to the date of issuance of this award.

In the event that backpay is found to be forthcoming to Claimant, interest on such monies shall not be granted since this Board is without express contractual authority in this particular area, and also because Organization has failed to include such claim in its final submission to the National Railroad Adjustment Board, Second Division.

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 1st day of October, 1980.