

The Second Division consisted of the regular members and in addition Referee Tedford E. Schoonover when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Southern Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the current Agreement when Carman W. J. Parks was not assigned to the position of Derrick Engineer as advertised by bulletin No. 2-66 on December 20, 1980 and a junior employee was assigned by bulletin No. 2-66 A.
2. That accordingly the Carrier be ordered to assign W. J. Parks to the position of Derrick Engineer and afford him a reasonable time to prove his qualifications.

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 employes 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 were given due notice of hearing thereon.

The Employees submit that the Carrier violated the Agreement when it failed to assign the Claimant to the position of Derrick Engineer as the successful bidder on bulletin No. 2-66 and failed to give him a reasonable trial to prove his qualifications and assigned a junior employe to the position. Paragraph (e) of Rule 20 states:

"(e) An employee shall be given a reasonable trial to prove his qualifications."

The Carrier's Master Mechanic, Mr. F. L. Brown, stated that his reason for assigning a junior employe was that the Claimant was not qualified as a Derrick Engineer, had never been trained and had never worked as a Derrick Engineer. We find Mr. Brown's statement to be false. The Claimant had been a groundman on the derrick for several years and had on many occasions asked to be allowed to train to operate the derrick but had never been allowed to do so. However, he took it on his own to learn the job and has acted as Derrick Engineer on several occasions.

In a letter submitted by the claimant in support of his claim, he alleged that carrier violated Rule 20 (e) by refusing to give him a reasonable trial to prove his qualifications. Included in his letter is the following:

**** The job bulletin that I bid on called for qualified Carman, not experienced engineers. There is no way, I could have become an experienced engineer, when the job wasn't awarded to me.

I have been a groundman for several years now on the derrick crew and despite having asked the foreman on many occasions I have never been allowed to train to pick up wrecks at derailments.

I have operated the derrick in the yard at the Engine Terminal, when I picked up an S.D. Engine that was derailed. I have also operated the derrick quite a bit around the repair track.

My point is this. I have learned on my own, how to operate the derrick and I have even gotten the operating manual from the foreman and took it home to study on my own time.

No one has even bothered to question me as to whether or not I can operate the derrick. I plan to prove I have operated the derrick, by submitting affidavits by some of my fellow employees, there by proving that Mr. Brown was not truthful when he said 'I have never operated the derrick'. ****

The Carrier contends that it had good and sufficient reasons in determining claimant lacked the qualifications required for assignment as derrick engineer. Carrier also contends that it did not act in an arbitrary or capricious manner in making its determination.

Bulletin of December 20, 1980 to fill the vacancy for Derrick Engineer of specified "Qualified Carman" could bid for the position. Claimant had greater seniority than the employee awarded the job. In denying claimant's bid, F. L. Brown, Master Mechanic stated as follows in his letter of January 29, 1981:

**** Mr. Parks was not assigned this job because he is not qualified as a derrick engineer. He has not been trained and has never worked as derrick engineer. His experience with the derrick are minimal at best.

Mr. David Ellington (Seniority date 2-27-70) has been a fully qualified derrick engineer for at least 6 years and has had vast experience in operating and maintaining the derrick. He is certainly qualified for the job and his assignment is correct and proper. ****

The Superintendent of Motive Power denied appeal on the grievance in his letter of April 20, 1981 and included therein the following statement:

**** Regarding the assignment of carman W. D. Ellington to the position of derrick engineer, I am assured by Mr. Brown and General Foreman P. H. Freeman that Mr. Ellington was the only qualified bidder. It is completely unrealistic to take the position that anyone bidding on the job of derrick engineer must be assigned the job.

The job of derrick engineer has generally in the past, been assigned to the best qualified applicant and that was the case with Mr. Ellington. Both Master Mechanic Brown and General Foreman Freeman tell me that Mr. Parks had never asked to be allowed to train as derrick engineer.

The evidence demonstrates that claimant Parks is a qualified carman as specified in the bulletin for the derrick engineer position. Opposed to Carrier assertion that claimant was not qualified as a derrick engineer are a number of affidavits submitted by claimant's fellow employes to the effect he frequently operated the derrick. Thus, Carmen Murphy and Leek made affidavits that they had seen claimant operate the derrick, pick up derrick equipment and place it in the boom car. Carman Tubens' affidavit stated he observed claimant operate the derrick in picking up an engine at the Engine Terminal. The affidavit made by Gary Scoggins stated he had seen claimant operate the derrick and is quoted as follows:

"I am a painter at the Atlanta Repair Track. I have recently completed painting the derrick.

On many days I have needed a derrick operator to Boom the derrick up and turn it around and propel it back and forth and separating the derrick from the Boom Car.

On several occasions the derrick foreman has assigned carman W. J. Parks to operate the derrick for me, and carman Parks has performed this feat quite well."

Another fellow employe, Dennis Hall, Rip Track Electrician, also supported the claimant as follows:

"I have observed carman W. J. Parks operating the Derrick at various times around the Rip Track, and I have also observed him propelling the derrick up and down the track."

Carrier contends the above statements should be disregarded because they were made by workers without experience in operating the derrick. Despite the Carrier disparagement they vouch for having seen the claimant operate the derrick on numerous occasions and are persuasive in support of claimant's insistence he is qualified. It is also noted that he asked for training many times but his requests were denied. This is in direct conflict with Carrier statement that he never asked for training. Being denied training by the Carrier, he took it upon himself to secure an operations manual and learned the operation on his own. He operated the derrick many times and there is no evidence that he had problems in doing so. The cumulative effect of the evidence supports a conclusion that Carman Parks made a prima facie case in support of his claim and that he is entitled to a reasonable trial to prove his qualifications as required by Rule 20 (e).

The decision of Master Mechanic Brown was based on his assertion that claimant was not a qualified derrick engineer. Such a decision is contrary to the requirements for the job as stated in the bulletin. It did not specify that a bidder needed to be a qualified derrick engineer, but instead, opened the bid to qualified carmen. The denial statements of both the Master Mechanic and the Superintendent of Motive Power alleging claimant's lack of qualifications are not backed by probative evidence and must therefore be deemed merely unsupported assertions.

While the Carrier challenges the probative value of statements by fellow employes in support of claimant we must note that the Carrier contentions are notably lacking in substantive evidence. The Carrier case may be boiled down to the unsupported assertions of the Master Mechanic and Superintendent of Motive Power. We note particularly the statement by Master Mechanic that Ellington, the junior bidder who was awarded the job, is a fully qualified engineer. We don't question Carrier motivation in trying to get the best qualified man but we must observe its actions did not comply with the rule.

Previous awards were submitted by both sides. Second Division Award 9764 submitted as supportive of the Carrier dealt with the question of disqualifying a bidder for the job of derrick engineer. It is noted, however, the disqualification was determined after the employe had been given a trial on the job. Thus, he was notified, "After observing your operation of the Danville derrick ... I find you not qualified to run the derrick; and by this letter I am disqualifying you herewith." The point of that award is that the employe was given a trial prior to being disqualified; not prior thereto as was done in this case.

Second Division Award 4214, covering a similar situation, includes a statement of particular relevance to this case as follows:

"We are not called upon to determine, nor can we, that Claimant is, or was qualified, but only to determine if he was given a fair trial before being returned to his former position.

A fair trial under Rule 4 (a) connotes to us an objective judgment, after adequate observation of a course of conduct, that a person is or is not qualified to render the service required."

Award No. 8449, also a Second Division Case, deals with the disqualification of an employe after he had been given a trial on the job. The point in that case, insofar as its relevance here is concerned, is that the claimant was given a fair trial in accordance with the applicable Agreement rule before being disqualified.

In still another Second Division case, i.e., Award No. 6946, the employe was disqualified after a trial period on the job but the award was to the point that he had not been given a fair trial. Thus, the Board found:

"From the entirety of the record, it is overwhelmingly evident that the Claimant did not receive a fair trial as required by Rule 15. Our findings do not conclude that the Claimant is qualified: only that he was not given a fair trial."

In reaching a decision in this case the Board is cognizant of Carrier's insistence upon its right to determine the fitness and ability of an applicant for a position. The Carrier will find no disagreement with the Board on this point. We fully agree with Finding on this point in Award No. 8449 as follows:

"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."

Carrier is directed to assign claimant to the position of derrick engineer as bulletined and give him a reasonable trial to prove his qualifications.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


(Nancy J. Dever - Executive Secretary)

Dated at Chicago, Illinois, this 1st day of August 1984.