

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Carrier be required to award Machinist A. L. Alspach Advertised Position No. 475, H-M 149, Harrisburg Locomotive Terminal.
2. That the Carrier compensated Machinist A. L. Alspach three (3) hours pay at the applicable rate for each day, December 30, 1981, and every day thereafter that he is denied his seniority rights when advertisement No. 475 was awarded to a Junior Machinist.
3. Machinist A. L. Alspach was denied his seniority rights when advertisement No. 475 was awarded to Junior Machinist A. W. Glace in violation of Rules 2-A-1, 2-A-3 and 3-A-1 of the Controlling Agreement.

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 waived right of appearance at hearing thereon.

A. L. Alspach is a machinist at Carrier's Harrisburg locomotive terminal. The Claimant entered a bid for a relief position advertised as HM-149 with these duties:

"Inspect, test, and repair diesel electrical and electric locomotives' must be qualified on acetylene and electric welding."

The assignment was awarded to A. W. Glace, who was junior to the Claimant.

The Organization asserts the Carrier violated Rule 2-A-1(a) and Rule 1-A-3(a) when it disallowed Claimant's bid, as Glace is junior to Claimant. Rule 2-A-1(a) states:

"In the exercise of seniority, the senior employee shall, if sufficient ability is shown by trial, be given preference to positions desirable to them."

Rule 2-A-3(a) 1. states:

"Employees awarded advertised positions for which they bid or applied or acquiring positions through displacement of junior employees, will be given full cooperation from supervisory forces and others in their efforts to qualify."

Tracing the development of Rule 2-A-1(a), the Organization submits that the following language was dropped in 1979 and argues that the intent of the parties is evident and reference to examinations or tests has been eliminated. The old language is, as follows:

"When a position involves air brake, welding, reflectoscope, magnaflux, radiograph, a non-written examination or test may be required as a prerequisite to assignment to the position of an employee who has not previously been qualified on such work by performance or otherwise; an employee bidding or seeking to displace on such a position shall upon request be promptly given an opportunity to take such examination or test."

The Organization also cites several examples of Carrier allowing the exercise of seniority pending qualification as proof the Agreement rules were modified to eliminate pretesting or examination prior to qualification.

The Organization's argument is logical, but overlooks the language of Rule 2-A-1(a). Clearly, that language provides for seniority preference to positions desirable. However, that is not the full extent of the language. The caveat is that the employee exercising seniority rights shall show sufficient ability by trial. This is not a modification of Rule 2-A-3(a)1, but is a condition precedent. Rule 2-A-3(a)1 is a condition subsequent to the award of a position.

Rule 2-A-1(a) does not require the employee to be fully qualified. but, he must by trial show sufficient ability to be awarded the position. The Carrier is vested by the Agreement with determining whether or not an employee has shown sufficient ability by trial to meet the criteria of a particular assignment. In the exercise of this right, management may not act in an arbitrary or capricious manner. As indicated above, Carrier erroneously equates Rule 2-A-1(a) to similar rules specifically requiring qualification. The essential fact of this case is that the record contains no evidence the Claimant prior to his bidding showed that he had any ability whatsoever to become a qualified welder. Considering the duties involved in Position HM-149, we find no basis in the record to reverse Carrier's determination.

Form 1
Page 3

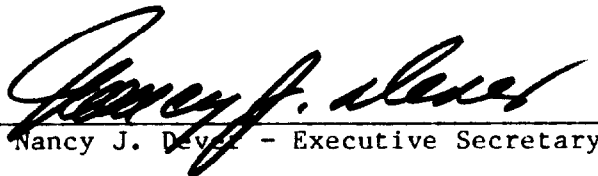
Award No. 10434
Docket No. 10309
2-CRC-MA-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June 1985.