

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: ( (Sheet Metal Workers' International Association  
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Carrier violated the terms of the current agreement when on December 27, 1983, William Paulson was hired as a Sheet Metal Worker in the B&B Department with complete disregard to Rule 102 of the current controlling agreement when the above had neither served an apprenticeship as a Sheet Metal Worker or had four (4) years' experience at the trade.

2. That William Paulson be removed from the Sheet Metal Workers' seniority roster and that Sheet Metal Worker, Richard Gayne be awarded this position.

3. That accordingly, Richard Gayne be compensated at the straight time rate for all time lost due to not being awarded this position from December 27, 1983 until the present.

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.

Claimant was a furloughed Sheet Metal Worker from the Carrier's California Avenue Car Shop with a seniority date of March 12, 1981. On December 27, 1983, the Carrier advertised a vacancy for a Sheet Metal Worker in the Building and Bridge (B&B) Department. The vacancy occurred as a result of the disqualification of the former job holder due to an inability to satisfactorily perform welding functions. Claimant and three other employees bid on the position. None of the employees were Sheet Metal Workers from the B&B Department. Rather than awarding the job to Claimant, the Carrier assigned the position to another bidder, B&B Carpenter W. Paulson. Paulson claimed four years prior experience as welder. The record also shows that Claimant was not the most senior Sheet Metal Worker applying for the job.

After the Claim was filed, the Carrier evaluated Claimant's welding capabilities - a requisite skill for the job. Claimant did not perform the test welds in a fashion sufficiently satisfactory to Carrier's Manager of Welding.

The Organization argues that the assignment of the position to Paulson rather than the Claimant violated the Controlling Agreement inasmuch there was no proof that Paulson completed and/or met the requirements of Rules 40 and 102 which require the serving of an apprenticeship or four years of experience at the Sheet Metal Workers' trade.

The burden in this case is on the Organization to prove the elements of its Claim. Upon a close review of the record, we are not satisfied that the Organization has met the burden.

First, the Organization has not demonstrated that Claimant was contractually entitled to the position on the basis of his seniority. The Organization asserts that Claimant had a contractual right to claim the job as a Sheet Metal Worker, an issue disputed by the Carrier, since it claims no seniority rights exist by virtue of the fact that the job was in the B&B Division and Claimant was not from that Division. However, this is an issue that we specifically need not decide. Claimant simply was not the most senior Sheet Metal Worker seeking the position, according to the record evidence. With respect to any assertions of the existence of a practice to the contrary, that is, of honoring seniority outside the B&B Division, again, the evidence on the record does not sufficiently demonstrate such a practice.

Second, and more important, the Organization asserts that Paulson was not qualified for the job. The Carrier felt otherwise. Whether or not Paulson was, in our view, qualified for the job is irrelevant. Claimant has not demonstrated that he was more qualified than Paulson. The position sought by Claimant required welding. Claimant was tested on his welding skills and did not perform to the Carrier's satisfaction. Based upon this record, we are not in a position to second guess the Carrier's decision that Paulson rather than Claimant was more qualified.

Third, with respect to the Organization's assertion that Paulson was unqualified on the basis of the asserted Rules, we note that the experience used by the Carrier in making its decision showed that Paulson had seven years experience as a B&B Carpenter, three years as an Electrical Apprentice and four years as a Welder for a steel fabricator. Rule 102 provides that "four or more years experience at various branches of the trade" is sufficient. Paulson's experience, as viewed by the Carrier, meets that requirement. Although the Organization may dispute Paulson's experience, especially that as a Welder, this disputed issue of fact, without more, is insufficient for us to conclude that the Organization satisfied its burden of proof in this case.

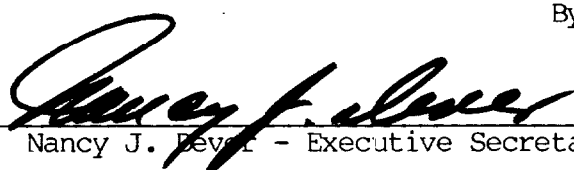
In sum, the reasons given by the Carrier for awarding the position to Paulson over Claimant stand unrebutted by sufficient factual showings. There is nothing in the record to sufficiently demonstrate that the Carrier's decision of awarding the position to Paulson over Claimant was in any fashion arbitrary or capricious. Second Division Award No. 10431.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1986.