

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11751  
Docket No. 11483  
89-2-87-2-134

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood Railway Carmen/Division of TCU  
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri-Kansas-Texas Railroad Company violated the controlling agreement, particularly Rules 70, 23, 18, 21, 28 and 71 when they arbitrarily furloughed Carmen N. D. Batey and H. Brown effective December 13, 1985, and Carman C. R. Jackson effective December 20, 1985, while retaining junior Carmen in service at Denison, Texas.

2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to compensate Carmen C. R. Jackson, N. D. Batey and H. Brown in the amount of eight (8) hours each at the proper pro rata rate for each work day that they are improperly withheld from service (each day's pay to be credited to a proper calendar date), and that they be made whole for Travelers, Aetna, Provident insurance, vacation credits and all Railroad Retirement benefits, and claim to be continuous until such time as they are returned to service. Claim of Carman Jackson to commence December 23, 1985 and claim of Carman Batey and Carman Brown to commence on December 16, 1985.

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.

The Claimants in the instant case are all employees at Denison, Texas. By bulletins effective December 13 and December 20, 1985, the Claimants were furloughed, all as part of a system-wide force reduction.

The General Chairman submitted a claim on the employees' behalf, charging that their seniority rights had been violated under Rules 18, 21, 23, 70 and 71 of Agreement No. DP-315, since junior carmen had been allowed to remain on positions while these three individuals had been furloughed.

The Carrier responded to the allegations by pointing out that no carmen junior to the three Claimants had remained in service subsequent to the force reduction, but that rather the junior employees in question were carmen-welders, who possessed the ability to operate oxy-acetylene, thermit, or electric welders. It also introduced evidence at the hearing allegedly demonstrating that Claimants were not qualified welders.

In a similar seniority claim, the Board held in Second Division Award 6760:

"The Organization relies almost exclusively upon Rule 19 of the Agreement to contend that Claimant, as the senior employee, should have been given the assignment, notwithstanding his conceded inability to perform the work...Under this theory, the Organization insists that seniority alone is the relevant factor in awarding such assignments, irrespective of qualifications.

...Carrier asserts that, under well-recognized principles, prior qualification is a condition precedent to entitlement to a position under seniority rules. Inasmuch as Claimant admittedly was not qualified, his seniority was not alone sufficient to support his claim to the job. Also, Carrier maintains that it has a right fairly to test applicants for a bulletined position, as it did in the instant case, but has no obligation to tutor the senior bidder. Finally, Carrier insists that it has the right to assign work in any manner not prohibited by the applicable Agreement.

...Careful consideration of all the evidence and circumstances herein compels a conclusion that there was no violation of the Agreement in this case."

In the instant case, Rule 23 of the controlling Agreement states: "Seniority of employees in each craft or subdivision thereof will date from the time pay starts when employed." However, as already established in prior Awards on the property, the Carrier is required to recall in seniority order only those employees who already possess the necessary skills to perform the job in question (Second Division Award 11351). And, it alone has the prerogative to determine an employee's fitness for a position, in the absence of a contractual proscription to the contrary (Second Division Award 6826).

No evidence has been presented before the Board to demonstrate that the three Claimants possess the skills required to assume the position of carman-welder. Since it is not persuasive to simply assert that they are qualified without providing proof of their fitness, the Board must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest.

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1989.