

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rule 33, when they abolished the position of crane operator and dealt the Claimant, Mr. Gross, future monetary losses from future derailments.

2. That accordingly, the claimant, Mr. Gross, be paid any future loss of wages and that Mr. Gross be reinstated as the crane operator.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 awarded the position advertised by Bulletin No. 25, of Qualified Crane Operator by Notice dated September 11, 1987. Carrier later abolished said position, rebulletined, and assigned the same position to another Carman. The Organization argues that the Carrier violated Agreement Rule 33, when it abolished Claimant's position.


The Carrier states that Claimant held the position as a trainee and was not found to be qualified. This Board has consistently held that determinations of fitness and ability are vested with the Carrier. Once the Carrier makes its determination, the burden of proof shifts to the Claimant to document by substantial probative evidence the Carrier's error. Nowhere in this record do we find any demonstration that Carrier's determination was wrong or any evidence that Claimant was clearly qualified to perform the duties of a crane operator. The Organization has failed to meet its burden of proof that Carrier's actions lacked a proper basis.

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 20th day of February 1991.