

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12671
Docket No. 12569
94-2-92-2-93

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

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(
(National Railroad Passenger Corporation
(AMTRAK)

STATEMENT OF CLAIM:

- "1. The Carrier violated the agreement when they denied Sheet Metal Worker James E. Poppe the rights guaranteed him under the provisions of the current and controlling agreement, and in particular, Rule 5 of said agreement. The Carrier violated the provisions of Rule 5 when they refused to allow him to be considered for promotion to a supervisory position.
2. That accordingly, the Carrier be directed to allow Sheet Metal Workers Poppe to be, as other employees at Beach Grove have, considered for a supervisors position."

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 employe 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 facts of this case are that Claimant applied for a temporary Foreman position in the Coach Shop 2 Sheet Metal Area and was informed on February 6, 1991, of the Carrier's denial of his request. The Carrier's sole reason for denial was based upon Nepotism Policy PERS-29, in that Claimant's son was employed in the same department as a Carman Welder.

The Claim of the Organization is that the Carrier violated Rule 5 of the Agreement when it failed to promote the Claimant. As for the Carrier's reliance upon PERS-29, the Organization argues that the Carrier often promoted employees at this facility to positions in which they operate in a supervisory capacity over other relatives employed at the same facility.

In this case, Rule 5 has not been violated. Rule 5 states that "employees covered by this agreement will be considered for promotion." The record substantiates that the Carrier considered the Claimant for promotion. The Organization failed to provide substantiation for its assertion that the Carrier violated the Rule.

PERS-29 is a unilaterally promulgated Rule which states in pertinent part that it exists:

"to provide guidance for the employment of relatives to ensure proper company controls;...and minimize actual or potential conflicts of interest."

The policy further states that:

"An employee...will be considered for employment, promotion or transfer provided that neither the employee nor the relative to be...promoted...would hold a position with the authority to supervise...or discipline the other person...."

There is nothing in PERS-29 which contradicts Rule 5. The Carrier has the right to consider the Claimant for promotion under the Agreement and did so. We carefully reviewed the Organization's evidence of record which consists of a rather long list of employees whom it argues were promoted prior and subsequent to Claimant into positions in which they supervised relatives. There are no dates or details of supervising responsibilities associated therewith. However, PERS-29 provides guidance, not prohibition of promotions over relatives.

There is insufficient probative evidence to prove a Carrier violation of the Agreement. In our review of numerous Awards relative to this case, we find Award 38 of Public Law Board No. 3705 to be on point between these same parties. Finding our conclusions to be uniform with this prior Award, we must deny the Claim under the doctrine of stare decisis, where past decisions have resolved identical disputes. As Public Law Board No. 3705 stated:

"Since only 'consideration' is required as to a Foreman's position, the Board finds that the Carrier has permissibly applied PERS-29 without violation of Rule 5."

In line with the above stated reasoning, the Board denies this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 9th day of March 1994.