

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12927
Docket No. 12860
95-2-94-2-17

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (CSX Transportation, Inc. (former
(Baltimore and Ohio Railroad
(
(International Brotherhood of Firemen
(and Oilers

STATEMENT OF CLAIM:

"Claim for R. Brittain for difference in rate of pay between Loading Foreman's rate and the rate of his position account Loading Foreman's position awarded to junior employee beginning October 1, 1993."

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 employee 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 were given due notice of hearing thereon.

On September 23, 1993, Carrier bulletined the position of Loading Foreman at its Curtis Bay coal and ore facility as a temporary vacancy. Michael Smith, an employee junior to Claimant, was awarded the position on October 1, 1993. A claim protesting this decision was filed on October 22, 1993.

The Organization argues that when the ability and merit criteria of the Agreement and the September 1, 1988 Agreement between the parties are met, seniority will prevail. Number 3 of this latter document reads:

- "3. Subsequent to the effective date of this Agreement, all vacancies or new Working Labor Foreman, Gang Leader and Lead Laborer positions will be bulletined pursuant to Rule 26(b) of the International Brotherhood of Firemen & Oiler Schedule Agreement and assignments to such positions will be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail."

The Organization notes that Claimant's name appears on the Firemen & Oilers qualification list and that he worked the Loading Foreman position, as well as the Pusher Foreman position, in the past.

Carrier argues that it has the right to determine an employee's qualifications and that, in this instance, its decision is unassailable. The listing cited by the Organization merely indicates that an employee has the minimum requirements to perform a job on a short-term basis. The junior employee, filled a Loading Foreman position from May 1, 1989 through May 12, 1992, and thus possessed sufficient ability and merit to fill the position.

This Board reviewed the entire record and finds merit in the Organization's claim. The September 1, 1988 Agreement does not say that a senior applicant must be the most able or meritorious in order to prevail. He or she need only possess "sufficient" ability and merit in order to be selected. In Claimant's case, Carrier acknowledges that he worked as a Loading Foreman on January 15 and March 10, 1989, as well as on December 5, 1992. There is nothing in the record to indicate that he did not perform successfully in this capacity. Under the circumstances here, it must be concluded that he met the criteria for selection here.

Claimant is to be assigned to the disputed position and allowed the difference in wages between what he was paid and what he would have received had he been awarded the Loading Foreman position on October 1, 1993.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Witness my hand at Chicago, Illinois, this 16th day of August 1995.