

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13347

Docket No. 13214

98-2-96-2-124

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- (1) That the Louisville and Nashville Railroad Company, (now a part of CSX Transportation) violated the controlling Agreement rights of furloughed Pensacola, Florida carman Apprentice W.A. Jackson, (hereinafter referred to as Claimant) specifically but not limited to Rule 27, when Carrier denied claimant’s transfer request dated January 29, 1995 under said Rule, and hired new carmen apprentice employees on February 15, 1995.**
- (2) Carrier should now be ordered to compensate claimant eight (8) hours pay each day beginning February 15, 1995 until March 24, 1995 at carman apprentice rate of pay; and for eight (8) hours pay each day at upgraded carman apprentice rate of pay plus any overtime Claimant could have worked from March 24, 1995 continuing until claimant is allowed his transfer request to return to work at New Orleans, LA from furlough.”**

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.

This claim involves the right of a furloughed employee to transfer under Rule 27. Claimant worked as a Student Mechanic in Pensacola, Florida, and was furloughed in 1981. In January 1995, Carrier announced in the local newspaper that applications would be accepted and interviews conducted for two Carmen or Student Mechanic positions in New Orleans, Louisiana. Interviews were conducted on January 13, 1995 and all 50 applicants were required to pass a comprehensive reading and basic math test. Claimant presented himself as an applicant and was part of the group that were rejected for failure to pass the tests and meet the minimum qualifications. Job offers were made to, and accepted by, two qualified candidates on January 18, 1995.

Claimant submitted a Rule 27 transfer request to the Organization on January 29, 1995, a copy of which was sent to Carrier on February 7, 1995. The instant claim was filed on April 4, 1995 alleging that Claimant should have been granted transfer rights for the position at New Orleans in preference to new hire John Sprouse who commenced service on February 15, 1995, under the following language of Rule 27:

“(a) While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company, seniority to govern.

(b) An employee laid off in force reduction desiring to secure employment under this rule shall notify his foreman in writing and furnish his craft General Chairman copy of the letter.”

The Organization contends that Claimant did not have to take a qualifying test, because he was already an employee with transfer rights under Rule 27. It argues that Carrier had no financial liability to the new hires until they commenced working in

mid-February, which was after it had received Claimant's transfer request, and that Carrier should have processed the transfer request in preference to starting new hires. The Organization relies upon Second Division Awards 6846, 12025, 12139 and 12781 in support of its request that Claimant be made whole and granted the transfer, despite the lengthy period of his furlough.

Carrier argues that there are two bases upon which the claim must be denied. First, it contends that the transfer request was untimely, coming some 14 years after Claimant's furlough and a few weeks after the new hires had been offered and accepted employment. Second, Carrier asserts that Claimant did not meet the minimum qualifications for the position as evidenced by his failure to pass the required tests administered to all applicants in January 1995. It notes that Claimant did not put in a transfer request until after he had failed the tests and was disqualified for the position. Carrier relies upon Public Law Board No. 3897, Award 10 in support of its argument that it was entitled to rely upon the date the decision to fill the position was made, and Second Division Awards 6760, 7274, 7376 and 7415 to affirm its right to establish qualifications for a job and require that an applicant meet those qualifications before being awarded the position.

A careful review of the record convinces the Board that we need not decide the issue of whether, all things being equal, Claimant would have had some preference over a new hire under the transfer provisions of Rule 27. Under the specific circumstances of this case, which include the 14 year hiatus of Claimant's employment, the fact that he took and failed the qualification exams, and did not have a proper transfer request on file until after the positions were offered and accepted, the Board finds that Carrier was within its rights to deny him the position on the basis that he did not meet the minimum requirements of the job. Claimant presented himself as a new applicant and was subject to the same job requirements applicable to all such applicants. No contest to the legitimacy of such qualifications is being raised in this case. Once Claimant proved that he did not meet those minimum qualifications, Carrier was entitled to rely upon those results in later denying his transfer request.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of November 1998.