

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
BANGOR AND AROOSTOOK RAILROAD COMPANY**

STATEMENT OF CLAIM.—

That Ned Hoskins be assigned to the position of Carpenter Foreman at Derby, Maine, with the difference in pay between Carpenter and Carpenter Foreman from March 16, 1936."

STATEMENT OF FACTS.--In their ex parte submission, the employees stated the facts, as follows:

"Section 1 of Article III of the current Agreement dated Dec. 22, 1921, between the Bangor and Aroostook Railroad Company and the Maintenance of Way Employees reads as follows:

'Promotion will be based on seniority, fitness, and ability. Fitness and ability being equal, seniority shall prevail.'

"During the month of March 1936, a position of Carpenter Foreman at Derby, Maine, became vacant and was advertised by bid in accordance with the Agreement. Mr. Ned Hoskins, among others, made application for this position.

"Mr. Hoskins' seniority dates from April 10, 1923, when he was employed as a Carpenter Helper. He was promoted to a Carpenter on July 9, 1923, and is now employed as a Carpenter. Between the period of his first employment and the time the position of Foreman was advertised, during February of 1936, Mr. Hoskins acted as Carpenter Foreman for a period of twenty-one months.

"Among others making application for the position of Carpenter Foreman at Derby, Maine, was Mr. Robert Trickey.

"Mr. Trickey's seniority dates from June 4, 1934, when he was employed as Carpenter Helper. He was promoted to Carpenter July 9, 1934, and was appointed to the position of Carpenter Foreman at Derby, Maine, on March 16, 1936."

The Carrier stated the facts following:

On February 4, 1936, a vacancy as Foreman of the Carpenter crew at Derby occurred and the vacancy was temporarily filled by a Bridge and Building Foreman and the position was advertised. Among the applicants were Ned Hoskins, employed in this crew and rated as Carpenter, with seniority as Carpenter dating from July 9, 1923, and Robert Trickey, with seniority as Carpenter dating from July 9, 1934. Mr. Hoskins was not considered competent to fill the position and Mr. Trickey was appointed Foreman at Derby on March 16, 1936.

POSITION OF EMPLOYEES.--It is the position of the Employees that: "Carrier violated Section 1 of Article III of the current Agreement between the Bangor and Aroostook Railroad Company and the Brotherhood of Maintenance of Way Employees in not assigning the position of Carpenter Foreman at Derby, Maine, to Mr. Hoskins after it had been advertised in accordance with Section 6 of the Agreement.

"Section 1 of Article III of the Agreement provides that promotion shall be based on seniority first, fitness and ability next and where fitness and ability are equal, seniority shall prevail.

"On February 4, 1936, when Jerry Hoskins left the service, officials in charge, feeling that Ned Hoskins was not competent to handle the work as a regular Foreman, sent F. F. Chamberlain, another Bridge and Building Foreman, there to take charge of the crew; and Mr. Chamberlain continued to handle the crew until March 16 when Mr. Trickey was appointed. The position was bulletined. Ned Hoskins was the oldest bidder for this position but the Superintendent of Bridges and Buildings and the Chief Engineer, feeling that he was not the most competent man who applied, and not competent to properly handle the crew, assigned Robert Trickey, a junior applicant, to the position.

"In considering Ned Hoskins' bid, the Chief Engineer and the Superintendent of Bridges and Buildings were obliged to take into consideration the fact that the cost of doing the work by this crew had appeared to be excessive and they were satisfied that this trouble would continue, in an even more aggravated state, if Ned Hoskins were appointed Foreman. While Hoskins was rated as Carpenter, he did very little Carpenter work—driving the truck, keeping time, and doing work more in the nature of a helper than that of a Carpenter—and extended observation of his work by the Chief Engineer had convinced him that while Ned Hoskins might, without serious detriment, be left in charge of the crew for short periods on work of minor importance, he did not have the qualifications to take permanent charge of this crew.

"The agreement between the Bangor and Aroostook Railroad Company and its Maintenance of Way employees, which was entered into on December 22, 1921, contains the following: (Art. III, Sec. 1)

'Promotion will be based on seniority, fitness and ability. Fitness and ability being equal, seniority shall prevail.'

"This clause places upon the officers in charge the duty of using his judgment based on his observation of the work of the various men, in determining who has the greatest fitness and ability for a certain position. In this case there was no question in the minds of the Chief Engineer and the Superintendent of Bridges and Buildings that Robert Trickey was the most competent man. It was clearly their duty, in compliance with the above article, and for the best interest of the Railroad Company, to appoint Trickey to the position of Foreman at Derby, and this was done."

OPINION OF BOARD.—In the claim of the employees that Ned Hoskins be assigned to the position of Carpenter Foreman at Derby, Maine, in place of Robert Trickey, who was appointed to that position by the Carrier on March 16, 1936, and that Hoskins be allowed the difference in pay between Carpenter and Carpenter Foreman from that date, the employees base their contention on the seniority of Mr. Hoskins over that of Mr. Trickey and quote Article 3, Section 1, of the Agreement between the parties, effective December 22, 1921, in support of their contention.

No question has arisen over the seniority of Mr. Hoskins and, were the promotion to the position in question to be determined on seniority alone, there would be no question but that Mr. Hoskins would be entitled to the position. However, Article 3, Section 1, of the Agreement specifies that in addition to seniority, promotion will as well be based on fitness and ability.

In the evidence submitted, various complimentary statements have been made in support of the appointment of each of the men who applied for the position in dispute by employees who have worked with, under or have knowledge of them. With these, statements have also been made to the long experience of Mr. Hoskins and the fact that he was carried on the pay rolls and served as a carpenter in charge for some months when the foreman was otherwise engaged, and served as Foreman or Acting Foreman for a period from October 19, 1934, to January 15, 1935, due to the absence of the regular foreman on account of injury.

While the statements of co-workers and other employees as to the merits of Mr. Hoskins and Mr. Trickey are of interest, little of value can be secured from them in determining the issue of this claim. As to the experience and service of the claimant as a Carpenter in charge for what is indicated as limited periods extending through a number of years during the various and intermittent absences of the Foreman, as well as during the term in which the claimant served as acting foreman, nothing is introduced which would tend to determine the superior fitness and ability of either of the men concerned in this dispute.

In the final analysis of this claim, the Board must recognize that with the seniority of the claimant established, fitness and ability are of equal importance and that, provided the decision is not influenced by prejudice or favoritism, the representatives of the Carrier in charge of the activities of the department indicated are best qualified to determine as to the employee best suited to the needs and requirements of the Carrier.

In view of the fact that no evidence is apparent indicating prejudice or favoritism, and that the Chief Engineer and Superintendent of Bridges and Buildings were among the best qualified officials of the Carrier to judge from among the applicants the man best qualified by fitness and ability for the position in question, the Board finds no cause for disturbing the action of the Carrier.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Board sustains the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 3rd day of September, 1937.