

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that J. M. Casteel, Bridge & Building Carpenter, be paid the difference between what he earned and what he would have earned had he been assigned to the position of motor car operator, Bridge & Building Gang No. 7, White River Division, from June 5 to August 20, 1941.

EMPLOYES' STATEMENT OF FACTS: Bulletin No. 3 was issued on June 5, 1941 over the signature of H. M. Baker, B. & B. Supervisor. It was addressed to all B. & B. employes of the White River Division and called for bids for several positions among which was position of motor car operator in Bridge and Building Gang No. 7; bids to close on June 15, 1941.

J. M. Casteel submitted a bid on Bulletin No. 3, motor car operator, and was the senior bidder.

Under date of June 16, 1941 Supervisor Baker issued a bulletin reading as follows:

"All bidders on motor car operator job are not qualified, therefore cannot be considered account not having passed the required examination on book of rules."

In 1928 Casteel was examined, qualified and assigned as motor car operator. Casteel was examined as an Assistant B. & B. Foreman and qualified. Since this dispute arose the Carrier called Casteel to take an examination and Casteel was qualified in the same manner as on previous occasions.

The motor car in B. & B. Gang No. 7 was in operation for the period involved in this claim.

There is an agreement in effect covering the working conditions of the maintenance of way employes on this property, effective July 1, 1938, which is by inference made a part of this Statement of Facts.

POSITION OF EMPLOYES: It is the Employes' position that the Carrier failed to comply with the provision of Rule 11 of the current agreement it holds with this Brotherhood.

Under date of June 5, 1941 the Carrier acknowledged, through the issuance of a bulletin, that a vacancy existed for position of motor car operator in Gang No. 7, working on the White River Division.

Prior to June 5, 1941 the position was held by a regular motor car operator in Gang No. 7. This operator was off from June 5 to August 20, 1941.

The vacancy remained unfilled during the temporary absence of the regular assigned Motor Car Operator in this gang from May 5 to August 20, 1941 during which period the foreman of this gang operated the motor car as necessity arose.

POSITION OF CARRIER: In the presentation of this case the Employees contend:

- (a) That Rule 11 was not complied with.
- (b) That Casteel had not been called on to pass any rules examinations.
- (c) That "passing the rules examination or buying standard watch" is not a qualification under the rules of the agreement between the Carrier and the Brotherhood governing the working conditions of employees dated July 1, 1938, but a requirement of the Management.

The Carrier's contention is that applicants for positions, as in this instance, must have the required qualifications, a requisite to having ability, as set forth in Rule 10. That the applicant must have the ability to meet the requirements of the position sought, which, in this instance, required a man to meet the qualifications set forth in Carrier's rules governing employees entrusted with the operation of motor cars.

Mr. Casteel, nor the Employees' Representatives, in the handling of this case, did not contend that he had the required qualifications. He never so alleged, but, to the contrary, the Employees' Representatives contend that Rule 10 (a) does not contain any requirement that the applicant be qualified but that Section (d) of the rule, providing:

"Employees accepting promotion and failing to qualify within thirty (30) days, may return to their former positions without loss of seniority.",

implies that employees shall qualify after promotion. To such a contention the Management is unwilling to concede. The rules do not so read. Such an application of Rule 10 (b) would completely nullify Rule 10 (a) that specifically provides that promotion shall be based on, among other things, ability, and it means ability at the time the promotion is made and not acquired after the promotion assignment is made. He must have the ability to do the work otherwise the rule would be meaningless. This, Mr. Casteel did not possess. He did not, or at least his employment record contains no indication, and as heretofore stated, contend at the time he applied for the job that he could pass the prescribed examination, a requirement for a Motor Car Operator. Neither did he possess a standard watch nor had he familiarized himself with the Maintenance of Way rules governing employees operating motor cars.

OPINION OF BOARD: The right of the Carrier to require Book of Rules examination of Motor Car Operators is unquestioned.

The record shows that on three previous occasions Mr. Casteel passed such examinations and was qualified. If his qualifications were in doubt for the assignment here involved, it was incumbent upon the Carrier to accord him an opportunity to take such examination, which was done within one month following the last date of this claim and he successfully passed same and was qualified. Under these facts the claim should be sustained.

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 employe involved in this dispute are respectively carrier and employe 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 claim will be sustained in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of May, 1944.