

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the agreement by not assigning Section Laborer Ross Whitacre to the position of Assistant Foreman on the Springfield Division as per Bulletin Number 14 of June 20, 1947:

(2) Ross Whitacre be now assigned to the position above referred to with proper seniority date, and be reimbursed for all monetary loss incurred by the Carrier's improper action.

EMPLOYES' STATEMENT OF FACTS: On June 20, 1947, the Carrier issued Bulletin No. 14 advertising the position of Assistant Section Foreman.

Mr. Ross Whitacre, employed as Section Laborer at Decatur, Illinois, submitted a bid on the position advertised in Bulletin No. 14. The Carrier awarded the position to Mr. Charles Petro, an employe having less seniority than Mr. Ross Whitacre. Whitacre protested the awarding of this position to a junior employe and was informed by the Carrier that he had been disqualified for the position because on two previous occasions he had been promoted to Section Foreman and on both occasions he had relinquished his rights as Section Foreman by letter.

The Carrier does not dispute the fact that Whitacre was the senior applicant for the position advertised in Bulletin No. 14 but feels that its actions in disqualifying Whitacre were justified in view of the fact that Whitacre had given up Section Foreman's position on two previous occasions. It is Whitacre's contention that he gave up the Foreman's position because he had suffered a nervous breakdown.

The agreement between the two parties of this dispute dated September 1, 1934, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: There seems to be no dispute over the facts contained in this instant claim.

Bulletin No. 14, dated June 20, 1947, advertised the position of Assistant Section Foreman. Although Mr. Ross Whitacre was the senior bidder he was not awarded this position.

In protesting this Carrier's failure to properly apply the promotion rules of the agreement, the Employees were informed by the Carrier that it had

not be subject to the possibility (as in this case) of assigning a foreman who might "just walk off the job" leaving the track, work and members of his gang unattended. A section foreman is charged with the responsibility of maintaining a certain section of Carrier's track and Carrier must know that such maintenance of facilities is being attended to at all times.

Rule 20 (a) of the current agreement reads as follows:

"Employees will be regarded as in line for promotion, advancement depending on faithful, intelligent and courteous discharge of duty and capacity for greater responsibility. Where these are sufficient, seniority will govern."

The rule specifically states "depending on faithful...discharge of duty and capacity for greater responsibility. Where these are sufficient, seniority will govern." Is Claimant Whitacre "faithful" when he walked off the job? Is such an employee to be considered for promotion? Is it not evident Carrier would be doing an injustice to the Claimant to assign him to a supervisory position that is likely to recreate the nervous condition which caused him to voluntarily leave such position and which might even result in loss of life while such condition prevailed? Is it consistent that an employee in such physical condition be required to direct other employees? Claimant's letter of March 31, 1949, is evidence that he does not desire to assume such responsibility.

In summation, Carrier contends it did not make this decision without carefully considering all aspects and conditions surrounding Claimant, and contends in view of all the pertinent facts, its decision was proper and justifiable.

OPINION OF BOARD: Claimant, employed as section laborer, bid on an advertised position as Assistant Section Foreman, but the position was awarded to a junior employee. It is claimed that this assignment violated Rule 20 (a) of the effective Agreement reading:

"Employees will be regarded as in line for promotion, advancement depending on faithful, intelligent and courteous discharge of duty and capacity for greater responsibility. Where these are sufficient, seniority will govern."

The decision as to fitness and capacity for greater responsibility rests ultimately on management and its judgment must be accepted unless arbitrary and unfair. The burden is on the employee to show that the action was arbitrary. The fact that Claimant has twice filled the position as foreman, by itself, might sustain that burden, but it is not disputed that in both instances he resigned because of nervous breakdown and on the second occasion turned the keys and time roll over to a laborer and walked off the job. On each occasion he went back to work the next day as a section laborer. That record fails to show capacity for greater responsibility or to indicate arbitrary action in declining another assignment within nine months thereafter, in the absence of any showing of employee's recovery from his nervous instability.

It is urged that this constitutes a penalty not imposed upon notice and hearing according to rule. Judgment as to fitness and capacity for responsibility need not be based only on penalties imposed. It is based on ability as well as on conduct.

It is further urged that Claimant had successfully held the position as Assistant Foreman and failed only as Foreman. Supervising ability is necessary in both positions and lack of capacity for the one would indicate very uncertain capacity for the other. We think there was substantial basis to support the managerial judgment in this situation.

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 Agreement was not violated.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.