

Award No. 6466

Docket No. MW-6244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

(1) The Carrier violated the agreement when it assigned an employe junior to Assistant Foreman Charles Brown to fill a temporary position of Track Foreman in Extra Gang No. 1, on August 20, 21, 22, 23 and 24, 1951;

(2) Charles Brown be allowed, in addition to compensation received, five days' pay at the applicable Extra Gang Foreman's rate of pay because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. Charles Brown was regularly assigned by bulletin to the position of Assistant Foreman on Extra Gang No. 1, which was under the direct supervision of Foreman Domenick Accetta.

On or about August 20, 1951, Foreman D. Accetta, was absent from his regular duties for a period of five working days account of personal illness.

During the five-day absence of Foreman D. Accetta, the Carrier assigned the General Roadmaster's brother, Mr. Ben Horner as acting foreman on Extra Gang No. 1. Mr. Horner had established no seniority under the effective agreement.

Mr. Charles Brown held seniority as a track laborer since November 3, 1935 and held seniority as an Assistant Foreman since July 1, 1940.

Mr. Brown has on numerous previous occasions been assigned as acting foreman, and no complaints or criticisms have ever been attached to his work as an acting foreman.

Claim was filed in behalf of Mr. Brown for five days' pay at the foreman's rate of pay in addition to payment received. The Carrier declined the claim.

foreman when he is not qualified. There can be no question about his not being qualified as a foreman because, as previously stated, while he was working in place of the foreman on vacation it was necessary to put someone with him to do the necessary timekeeping and accounting for materials used. Those duties are an integral part of a foreman's duties and, lacking that ability, there is no merit in his contention that he should have been permitted to fill the temporary vacancy in question.

His only claim to the foreman's vacancy in question must be predicated on seniority, fitness, and ability. As he didn't have the necessary fitness and ability, his claim falls of its own weight. Our position is fully supported by Third Division Award 5603. The claim should be denied.

OPINION OF BOARD: Foreman Accetta was absent from his work for a period of 5 days due to illness. During his absence the Carrier assigned Ben Horner as Acting Foreman on Extra Gang No. 1. Horner has established no seniority under the Agreement, but Charles Brown held seniority as a track laborer since November 2, 1935 and held seniority as an Assistant Foreman since July 1, 1940. Prior to August 1951 Brown had been assigned as Acting Foreman.

It is the position of the Employees that the Carrier violated Rules 4 and 7 (a) of the Agreement and that the Carrier should be penalized for its deliberate violation of the Agreement.

It is the position of the Carrier the Claimant has been in the service of the Carrier for many years and was promoted to Assistant Track Foreman before they inaugurated the practice of requiring that all Assistant Foremen be able to read and write and to personally be able to account for the time of their men and for all material used. Because of that fact, they have permitted him to continue as Assistant Foreman but such kindness in this respect should not be taken advantage of by insisting that they use him as a Foreman when he is not qualified.

It appears that in 1940 Claimant was promoted to the position of Assistant Foreman and that in 1948 the Carrier promulgated a rule to the effect that ability to read and write thereafter would be a necessary qualification before track forces would be promoted to positions of Assistant Foremen and Foremen. It is an admitted fact that Claimant cannot read or write. The Carrier disqualified Claimant because he was unable to maintain records, submit reports and account for time and money expended and material consumed by the men who would be under his jurisdiction and that the only time he was used as a Foreman was in emergency cases.

Under the Agreement promotions are based on ability and seniority. It is conceded that Claimant has seniority. It is apparent that Claimant relies on the fact that the Carrier permitted Claimant to act as a temporary Foreman on previous occasions as establishing his fitness and ability to serve as Foreman in August 1951. In our opinion the Carrier was within its rights in requiring Foremen to have the ability to read and write. It follows that one not having those requirements was not discriminated against by not being assigned the job in question.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.