

Award No. 10403

Docket No. MW-9605

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

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:

(1) The Carrier violated the Agreement when it failed and refused to assign B&B Carpenter L. A. Curtis to the position of Assistant B&B Foreman, as was offered in bulletin dated March 5, 1956, and assigned the position to a junior employe without offering or permitting Mr. Curtis the opportunity to qualify for the position he accepted as per the offer set forth in the bulletin dated March 5, 1956.

(2) Claimant L. A. Curtis be assigned to the position of Assistant B&B Foreman as was offered in bulletin dated March 5, 1956 and that he be allowed seniority as an Assistant B&B Foreman as of the date he should have been assigned thereto (seniority rule 1 (a-1).

(3) Claimant L. A. Curtis be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On March 5, 1956, the Carrier issued Bulletin No. HW-2, advertising vacancy of one Assistant B&B Foreman, Gang No. 6. B&B Carpenters L. A. Curtis (claimant) and C. W. Jester filed applications for this position.

The seniority datings of these employes, as reflected on the 1956 Seniority Roster, are as follows:

Name	Date Entered Service	Promoted to Carpenter
Curtis, L. A.	March 11, 1947	March 2, 1948
Jester, C. W.	November 1, 1952	February 2, 1953

On March 19, 1956, the Carrier issued a bulletin assigning this position to B&B Carpenter C. W. Jester.

Claim as set forth herein was filed, the Carrier denying same throughout all stages of handling.

There is no agreement requirement or merit to the claim here under consideration and it is hoped you will so find.

(Exhibits not reproduced)

OPINION OF THE BOARD: The Claimant in the instant dispute entered service March 11, 1947, as a B&B Helper, he was promoted to Carpenter April 1, 1947. Mr. Jester, the employe promoted to Assistant B&B Foreman, entered service November 1, 1952 and promoted to Carpenter February 2, 1953. Thus it appears that Claimant Curtis is senior to Mr. Jester.

Thereafter on April 2, 1956, the Organization's Local Chairman instituted a claim in behalf of Mr. Curtis on the contention that Carrier should have assigned him to this position, as he was senior to the employe who was awarded the job.

This Division has had before it many cases involving the determination of fitness and ability of its employes, we quote from Award 8196:

"This Board in passing upon similar cases has formulated certain principles, the most basic of which is that it is the prerogative of Management to determine fitness and ability of applicants and that this Board will not substitute, on a paper record, its judgment for that of the Carrier unless it can be shown that the Carrier's action was an abuse of discretion.

"A good exposition of the applicable principles are set forth in Award 3273 (Carter) here reiterated:

"It is the function of management to select competent employees. Except when it has limited itself by contract, the right to selection is wholly within the discretion of management. Award 3151. Under the cited rule, the Carrier has the right to determine in the first instance the fitness and ability of applicants for the position. Award 2427. Fitness and ability for promotion to a position of greater responsibility must be commensurate with the requirements of the position to be filled. Award 2990. Fitness and ability does not mean that the applicant is immediately qualified to step in and assume the duties of the position without guidance or assistance. Award 2427. It means that the applicant must have such training, experience and character as to raise a reasonable probability that he would be able to perform all the duties of the position within a reasonable time, usually the qualifying period fixed by the Agreement itself. The Carrier is required under the rule to give the position to the senior applicant if his fitness and ability are sufficient and it may not properly insist upon the right to make the assignment to the applicant which it deems best qualified. Award 2534. After the Carrier has determined that a senior applicant lacks sufficient fitness and ability, the burden is upon such applicant to establish that he possessed reasonably sufficient fitness and ability to occupy the position. Award 1147. Where there is evidence, which if believed, is sufficient fitness and ability for the position sought, the judgment of the Carrier will not be disturbed. Award 3057. Otherwise stated, whether an employe possesses sufficient fitness and ability for a position within the meaning of the rule is a matter exclusively for the Car-

rier to determine and such a determination once made will be sustained unless it appears that the action of the Carrier was capricious or arbitrary. Award 2692.'"

We quote from Rule 10 of the Agreement before us:

"Rule 10(a) Promotion shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail."

The main contention of the Employees is that since the Claimant was the senior applicant and bid on the bulletin position, the Carrier is required to give the position to the senior applicant without evaluating his qualifications for the qualifying period of thirty days—as provided in Rule 10(d-3).

We quote same:

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

With the employees contention we do not agree. This would deprive the Carrier of its right to pass on the applicants ability in the first instance. Besides that, Rule 10(d-3) states that it applies only to employees who have accepted promotions.

The employees do not assert that the Carrier was arbitrary or capricious in failing to promote the Claimant, and there is nothing in the record that shows the Carrier was.

The claim is not meritorious and should be denied.

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 as alleged.

AWARD

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March, 1962.