Award No. 11978
Docket No. MW-11470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it laid off B&B Carpenters Vance G. Gile, G. R. Bradshaw and John H. Osterbuhr from District B&B Crew No. X-1 and retained junior employes in service during August and September of 1958.

(2) Because of the violation referred to in Part (1) of this claim, each of the claimants be allowed pay at their respective straight time rates as follows:

Vance G. Gile for August 18 through August 29, 1958

G. R. Bradshaw for August 25 through August 29, 1958

J. H. Osterbuhr for August 25 through September 2, 1958

EMPLOYES' STATEMENT OF FACTS: During July, August and September of 1958, District B&B Crew No. X-1, under the supervision of Foreman Alsin, was engaged in rebuilding a bridge, including the driving of the piling, on the territory comprehended in the Carrier's IM&D Division.

In July of 1958, the claimants, who have established and hold seniority as Bridge and Building Carpenters on the territory comprehended in the aforementioned division, but who were in furloughed status, requested and were permitted to exercise displacement rights on the above referred to District B&B crew.

Claimant Gile worked on the District B&B crew from July 14 to August 15, 1958, Claimant Bradshaw from July 10 to August 22, 1958, and Claimant

Rule 5 (h) 4, it is the position of the Carrier that the claim is devoid of merit and should be denied.

All basic data contained herein has been made known to the employes.

OPINION OF BOARD: The Claimants, Gile, Bradshaw and Osterbuhr were regularly employed as Carpenters on Division B&B Crews. In July 1958 a District Crew was doing bridge renewal work in the Division area and through the exercise of seniority Claimants were employed by the District Crew as follows: Gile July 14 to August 15, Bradshaw July 10 to August 22 and Osterbuhr July 16 to August 22, when they were laid off and the remaining work completed by District Crew men junior to the Claimants.

The question to be resolved is: Did the Carrier violate the agreement when it failed to recognize the seniority of the Complainants?

The Complainants contend that they were qualified to do the work, had been doing the work and that the work performed by Division and District Crews is similar. Furthermore, Rule 5 (h) 4 was violated in that the Claimants were qualified and were not permitted to complete the work by the arbitrary action of the Carrier. The general tenor of the Claimants contention is that under the agreement, if qualified, a carpenter wherever he works, is a carpenter.

It is the Carrier's contention that the Claimants were not qualified to perform work that the District B&B Gang was engaged in. In addition there is no proof in the record that the Carrier was arbitrary in the selection of the junior men.

This Division as a general rule, where fitness and ability is to determine whether a Claimant is to fill a position, recognizes as a basic principle the prerogatives of management to determine fitness and ability unless there is a showing of arbitrary and capriciousness on the part of management.

In the facts herein we have a District Crew doing bridge renewal work on a Division. I am of the opinion that the work of the District is different and calls for greater skill on the part of Employes than a Division Crew. Otherwise the Carrier would have the Division Crew do the work. These men were selected to do the work originally because their Division skills could be applied to that part of the work. As the work progressed it became more specialized and the District Foreman gave reasonable grounds for replacing the men. The evidence offered by the Complainants as to their proficiency applied to their work on Division Crews and not District Crews where different types of work and using different equipment was required.

Thus we are unable to find from the evidence that the Complainants were qualified to do the work or that the Carrier was arbitrary or capricious, in its selection of the junior men. Thus Rule 5 (h) 4 was not violated.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at *Chicago, Illinois, this 13th day of December 1963.*