



Award No. 15002
Docket No. MW-15918

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY 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 the position of roadway machine operator as advertised by Gary Division Bulletin No. 3414 to Mr. A. Villarreal, who was the senior applicant therefor. (System Case No. TG-21-64—VM-20-64).

(2) Mr. A. Villarreal be compensated for all wage loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Under date of August 30, 1964, the Carrier issued Bulletin No. 3414 advertising the position of roadway machine operator on the Gary Mill Division.

Proper and timely applications for the aforesaid position were received from eight (8) Group 1 Track Sub-Department employees (track laborers), including the claimant.

Despite the fact that the claimant held greater seniority than the other applicants for the subject position and despite the fact that he had considerable experience in the operation of the Carrier's various roadway machines, the Carrier failed and refused to assign him to the subject position by Bulletin No. 3414-C, which reads:

"Maintenance of Way Department

BULLETIN

To be posted at all bulletin boards

Joliet, Illinois September 17, 1964

No. 3414-C

To: All Track Subdepartment Employees, Gary Division

The following position advertised under Bulletin No.

Position Roadway Machine Operator

OPINION OF BOARD: The primary question to be determined in this dispute is whether Carrier was arbitrary, capricious and unreasonable in denying Claimant, a senior employe, the right to a bulletined position.

In the handling on the property, Carrier determined that Claimant was not qualified for the position of Roadway Machine Operator because he had not scored sufficiently on a test known as the "Wonderlic Mental Ability Test". In his letter to the General Chairman, the Division Engineer stated:

"In this case, Mr. Villarreal was given the Wonderlic Mental Ability Test. This test sets as a base a score of 15. Mr. Villarreal was only able to answer seven questions correctly. This being the case, he was deemed to have insufficient ability and merit to be considered for promotion to roadway machine operator."

It is clear that Carrier has the right to administer tests to determine whether or not an employe is qualified for a position.

It is equally clear that such tests must be such to allow reasonable men to conclude that the results are sufficient indication or proof of qualification or disqualification.

Standing alone, a score on the Wonderlic Mental Ability Test is insufficient to determine Claimant's qualification as a roadway machine operator.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1966.