



Award Number 17927

Docket Number MW-18364

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

- (1) The Carrier's disqualification of Garage Serviceman J. Childs as a motor car repairman was unjustified and improper. (System file: SG-12-67—WM-11-67).
- (2) Garage Serviceman J. Childs be reinstated as a motor car repairman with seniority rights unimpaired and be allowed the difference between what he would have earned at the motor car repairman's rate and what he earned at the garage serviceman's rate beginning on August 30, 1967, and continuing until his reinstatement.

EMPLOYEES' STATEMENT OF FACTS: The claimant entered the Carrier's service as a track laborer on February 11, 1957. In addition to his seniority as a track laborer, he has established and holds seniority within the Scales and Work Equipment Subdepartment, Gary Division, dating from June, 1962.

During April, 1964, the claimant submitted an application for a motor car repairman's position advertised within Bulletin 3339. Even though he was the only applicant for the position, the Carrier refused to assign him thereto. He was advised by Supervisor Riegel he was not then and never would be qualified as a motor car repairman. The Employees protested the Carrier's pre-judgement of the claimant's ability to perform the work and contended that he should have been assigned thereto and afforded an opportunity to qualify in accordance with the provisions of the Agreement. The Carrier contended that when it gave the claimant the Wonderlic Mental Ability Test, he had not attained a score high enough to warrant a promotion. The dispute was subsequently adjudicated by this Board and the Employees' position was sustained when, in Award 15586 (House), it was held that the Carrier's action had been "unreasonable and arbitrary". In compliance with the Board's order to "make effective Award No. 15586 . . . on or before July 16, 1967," the Carrier reimbursed the claimant for the monetary loss he had suffered and, by bulletin dated June 14, 1967, assigned him to the motor car repairman's position.

The claimant's scheduled vacation prevented him from assuming the duties of this position until July 3, 1967, at which time Assistant Supervisor Carter advised him not to buy any tools with the intentions of being a motor car repairman.

talk over the matter with the employees' immediate supervisors and centralize the facts of the matter. The point is that nothing was heard from your Organization until over a month and one-half later when it filed this claim premised on sweeping generalities and accusations. For example, the contention that Childs was told not to buy any more tools because he was not going to qualify. This latter allegation not only was refuted by Mr. Riegel but it also was refuted by Mr. Childs' foreman's statement of December 19, 1967 wherein he stated Childs:

'... had a good set of tools and he knew how to use them properly....'

"The statement in former General Chairman's (Woods) original claim concerning Childs taking the Wonderlic Test is another example. Childs was not given the Wonderlic Test again, until midway through his qualifying period when legitimate concern arose as to whether he (Childs) would qualify. There are many other such sweeping self-serving uncorroborated allegations by your Organization in the record of this case. Since they have all been made a matter of record and refuted, we'll let the record speak for itself.

• * *

Also incorporated by reference into this Statement of Facts are the public records underlying Third Division Awards Nos. 14320, 15586, 16157 and 16158.

INVOLVED RULES:

Brotherhood of Maintenance of Way Employees Schedule Revised and Reissued August 1, 1952:

"MAKING PROMOTIONS

"Rule 8. Promotion shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail, management to be the judge of ability and merit, subject to appeal."

* * *

"FAILURE TO QUALIFY

"Rule 10. Employees awarded bulletined positions will be allowed sixty (60) calendar days in which to qualify for such position and failing to do so will be so notified within seven (7) calendar days of the expiration of the sixty (60) day qualifying period at which time they will have the right to return to their former positions without loss of seniority."

(Exhibits Not Reproduced)

OPINION OF BOARD: The instant dispute involves the disqualification of a garage serviceman seeking promotion to the position of a motor car repairman under the controlling Agreement.

It is the contention of the Organization that Claimant was not afforded a fair and just opportunity to qualify for the motor car repairman position in the face of the underlying circumstances upon which he acquired the position, nor was he afforded a realistic and reasonable judgement of his work during his qualifying period.

Childs was last given this test. This questionnaire consists of 153 written practical problems to which there are multiple choice answers. There is no time limit for taking this questionnaire. All questions pertain to practical problems which a Motor Car Repairman would be confronted with and to which he should not need to refer to any manual. In 1964, Childs answered 43% of these questions correct. When given this same test on July 31, 1967, Childs answered 44% of these questions correct, (two more correct answers) but this time his answers were grossly inconsistent with his previous answers, giving for the most part, incorrect answers where he previously gave correct answer and vice versa. He also took an excessive amount of time in completing this questionnaire.

"When Mr. Riegel was advised of the above results, he had Childs take the Wonderlic Test (a time test). In 1964, Childs took this test and scored a seven (7). On August 4th, Childs again took the test and again scored a seven (7) and like his mechanics' questionnaire performance, his answers in 1964 and 1967 were quite inconsistent. All this tended to verify Mr. Snyder's observations that Childs had considerable difficulty in reading and comprehending the technical maintenance and repair manuals which are so essential to a Motor Car Repairman's work. The importance of these manuals is due to considerable diversity of equipment we maintain and repair on this property.

"While the Carrier might have disqualified Childs at this point, the decision was made to give him every possible opportunity to make the grade.

"The second half of Childs' qualifying period was a repeat of the first half and no visible improvement was ascertainable. The record is clear on this point, as shown by his overall performance record which was furnished your Organization at Mr. Riegel's level. It was not that Mr. Childs wasn't trying his best, it simply was, and is, that Childs didn't have the faculties and couldn't do the job.

"In accordance with Rule 10, seven calendar days prior to the expiration of his sixty (60) day qualifying period, Childs was notified, in writing, that he had failed to qualify. After handing Childs this notification, Mr. Snyder had a good heart to heart talk with Childs and told him that his efforts were appreciated but that if he was ever to become a Motor Car Repairman he had to have some kind of formal assistance other than what the Carrier was set up to provide. Snyder again advised Childs that if he would enroll in some accredited mechanic's course and complete same with a passing grade, that he, Snyder, would personally see that Childs would be promoted to a Motor Car Repairman. Once again, Snyder informed Childs that the Carrier would bear the cost of such a course. In conference on August 6, 1968, in this office, your Organization was advised that this office would back up Mr. Snyder's offer.

"One of the purposes for giving a disqualification notice seven (7) days prior to the end of the qualifying period is to afford the disqualified employe an opportunity to take the matter up with your Organization and to give your Organization a timely opportunity to intervene on the employes' behalf and sit down and

It is the contention of the Carrier that Claimant was afforded full opportunity to show his capabilities as a motor car repairman during the qualifying period and failed.

Upon consideration of testimony presented, exhibits introduced, briefs submitted and the Agreement between Elgin, Joliet and Eastern Railway Company and the Brotherhood of Maintenance of Way Employees it is clear that the Carrier has reserved to itself the right to be the judge of ability, subject to appeal. Employees awarded bulletined positions are allowed sixty (60) calendar days in which to qualify for such positions and failing to do so have the right to return to their former positions without loss of seniority.

Previous awards of this Board have not supported every decision of management merely because it was an exercise of managerial judgement. When managerial judgement is challenged, it is the obligation of management to supply the evidence by which this Board can decide if that judgement was proper.

This the Carrier has done.

This case comes to this Board with hinted echoes of discrimination and prejudgement. Our study of the record does not indicate that the disqualification of the Claimant was discriminatory or prejudiced.

Whether the Claimant possesses sufficient ability as a motor care repairman is a matter for the Carrier to determine and such an evaluation will be sustained unless it appears that the action was capricious or arbitrary. In the instant case the Organization has not proven that the action of the Carrier was arbitrary or capricious or unjustified or improper. Since we find that Carrier's complained of action was not unjustified or improper, we will deny the claim.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.