

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20243
Docket Number SG-19879

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (George P. Baker, Richard C. Bond, Jervis Langdon,
(Jr., and Willard Wirtz, Trustees of the Prop-
(erty of Penn Central Transportation Company,
(Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the former Pennsylvania
Railroad Company that:

(a) The Company violated the Agreement, Article 4, Section 20(D), on November 15, 1967, when it removed D. A. Madden, Section Maintainer, Zoo Section, tour of duty 8:00 A.M. to 4:30 P.M., rest days Saturday and Sunday, and assigned him to Position 2388, 2nd trick Section Maintainer, Broad and Zoo, tour of duty 3:00 P.M. until 11:00 P.M., rest days Saturday and Sunday. At the time of this move, there were two Junior Mechanics--one, R. N. Haney, was reduced from the class due to a bump and should have been brought up from the Assistant Signalman's class to fill this job. The other, Junior Mechanic A. T. Eliassen, was working in the Cyclematic Gang at North Philadelphia and at the present date is still working in this gang.

(b) Claim is made for each eight (8) hours that D. A. Madden was forced to work illegally at Broad Tower Section on the second trick from 3:00 P.M. until 11:00 P.M. instead of the first trick at Zoo Section from 8:00 A.M. until 4:30 P.M., plus all overtime made by M. G. Hudson, who was awarded Madden's job on an advertisement.

/System Docket No. 658 - Philadelphia Division Case No. 1387

OPINION OF BOARD: Claimant had a seniority date of May 3, 1967 as a Maintainer, C. & S. on Carrier's Philadelphia Division. On August 16, 1967 he was assigned to the position of Maintainer C. & S., Broad and Zoo Section, Philadelphia with a second trick tour of duty with hours of 3:00 P.M. to 11:00 P.M. at a rate of \$3.394 per hour. Based on his bid and subsequent award, Claimant was assigned effective November 1, 1967 to the same position and pay but on the first trick with hours of 8:00 A.M. to 4:30 P.M. His former second trick position was advertised and no bids were received. On November 15, 1967 Claimant was removed from his first trick position and reassigned to the second trick job. R. N. Haney, an Assistant Signalman, had a seniority date of October 30, 1967 as a Maintainer, C. & S. He had been displaced from the Maintainer's Class on November 10, 1967 and had been working as an Assistant Signalman. A. T. Eliassen, Maintainer C. & S. had a seniority date of October 30, 1967 as a Maintainer and

was assigned as a Maintainer C. & S. in the Cyclematic Gang at North Philadelphia.

Petitioner argues that Assistant Signalman Haney, who had been reduced by displacement, should have been brought up to fill the second trick assignment under the provisions of Article IV Section 20 (d) of the Agreement. It is further contended that Haney was qualified for the position since he had qualified for promotion to Signal Maintainer and had been displaced for seniority rather than qualification reasons. Article IV Section 20(d) provides:

"ARTICLE 4-SENIORITY AND ASSIGNMENT TO POSITIONS

Section 20 (d)

When no bids are received from qualified employees for a position under advertisement, such position shall be filled by recalling an employee reduced or furloughed from the class in accordance with Article 4 Sections 9 and 10.

If such a position cannot be filled through this procedure, the qualified employee in active service in the class in which the position is advertised, with the least seniority in that class, shall be required to accept such position, and if he declines to accept the position he shall forfeit his seniority in the class in which the position exists, except that:

If a position is under advertisement in the mechanic class and it cannot be filled by recalling an employee reduced or furloughed from the class in accordance with Article 4, Sections 9 and 10, the position shall be filled by an Assistant Signalman who has completed his four year course of training, if the position cannot be filled with such an Assistant Signalman, the qualified mechanic in active service with the least seniority as mechanic shall be required to accept the position and if he fails to do so shall forfeit his seniority in the mechanic class."

Article 4 Section 9 (a) and Section 10 (a) also are applicable:

"Section 9 (a)

An employee reduced in class when force reductions are made must if he possesses the necessary qualifications, accept return to service in seniority order, in an advertised position or permanent vacancy in the class from which demoted, if no bids

" have been received from qualified employes for such position or vacancy. Refusal to accept such return to service shall constitute forfeiture by the employe of his seniority rights in all classes above that of helper."

"Section 10 (a)

An employe laid off in force reduction, including one who has elected to accept furlough under the provisions of Section 3 (c) of this Article, must keep the officer who notified him of the reduction informed, in writing, of his address. He must return to duty within ten days from the date a notice by registered U.S. Mail is mailed to his last recorded address, directing him to report for service in an advertised permanent position or vacancy for which no bids have been received from qualified employes. If there are conditions which prevent him from returning to duty within this ten day period, he must, within the ten day period, report by telephone or otherwise to the officer notifying him, giving his reasons for being unable to return to duty, and must request permission to be absent. When an employe secures permission to be absent this will extend the ten day period by the length of the period he is granted permission to be absent. An employe failing to report for duty within ten days from the date such notification is sent to his last recorded address, who has not reported and secured permission to be absent, shall forfeit all seniority and shall cease to be an employe of the Company."

Carrier takes the position that neither Haney nor Eliassen were qualified to fill the position of Maintainer C. & S. at Zoo Interlocking and that it had selected Claimant as the qualified Maintainer with least seniority in the class in accordance with Section 20 (d) above. During the handling on the property Carrier's C. & S. Supervisor in a letter dated January 24, 1968 stated:

"The men you mention in this claim, A. T. Eliassen and Rufus Haney, had previously been examined in the presence of Mr. J. L. Nack, B. R. S. Local Chairman and had not displayed sufficient ability to qualify as Maintainers, C. & S. at Zoo Interlocking."

The Organization cites Award 20107, involving a closely related issue, in support of its position. We note, however, that in the cited case Carrier provided no evidence whatever, or even explanation, to support its conclusion that the junior employes were not sufficiently qualified; that factual situation is clearly distinguishable in the instant dispute, as noted above. Furthermore we do not agree with the conclusion reached in Award 20107 that the fact

of the dispute involving a senior employee being assigned to a position rather than a junior employee is a sufficient basis to deny the application of the principle of determination of qualification by the Carrier as enunciated in prior decisions. It is our conclusion that the responsibility of the Carrier to protect its property and the even more significant responsibility for the safety of the public and its property is sufficient rationale to justify Carrier's prerogatives in this area; for this reason we affirm the historic position of the Board recognizing the right of management to determine the fitness and ability of an employee for a particular position. This right may be set aside only if it can be shown by convincing probative evidence that Carrier acted arbitrarily and capriciously. See Awards 17177, 15494, 12994 and many others.

In the dispute before us the Agreement makes a distinction between classification and position (Article IV). It is apparent that not all employees in a classification are qualified for every position. The Organization at no time took exception to the statement by the Supervisor C. & S. quoted above and presented no evidence concerning the qualifications of either Haney or Eliassen. There is nothing in the record indicating that Carrier's actions were arbitrary or capricious. We conclude therefore, that Carrier properly assigned Claimant to the second track position in conformity with Article IV Section 20 (d).

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

XTTE ST :


Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.