NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20724
THIRD DIVISION Docket Number MW-20596

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
((Pacific Lines)

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

(1) The Agreement was violated when the Carrier did not award to Richard Hicks a position of assistant foreman on B&B Gang #2 (Bulletin No. 49, dated Z-28-72) but awarded two of said positions to junior employes. (System File MofW 148-340)

(2) The Carrier further violated the Agreement when it failed to give consideration to the application of Mr. Hicks to qualify for the assistant B&B foreman's class (Rule 8).

(3) (a) Richard Hicks be accorded a seniority date as Assistant B&B Foreman as of Z-28-72.

(b) Richard Hicks be placed on the Assistant B&B Foreman's position on B&B Gang #2.

(c) Richard Hicks be paid the difference in the rate of pay he did receive and the rate applicable to the Assistant B&B Foreman's position from 2-28-72 until such time as he is placed on the aforesaid position.

OPINION OF BOARD: This dispute involves the fitness and ability of Claimant to be promoted to the position of assistant bridge and building foreman. Claimant, a Class "A" Carpenter had seniority in the B&B Department from February 17, 1960. On December 1, 1971 Claimant filed an application under Rule 8 of the Agreement indicating his desire to qualify for the position of Assistant B&B Foreman. On February 7, 1972 Carrier advertised three positions of Assistant B&B Foremen and Claimant submitted a bid for one of the three positions. No employees holding seniority in the class of Assistant B&B Foreman bid for the vacancies. Two of the vacancies were awarded to employes with less seniority than Claimant, neither of whom had made application for advancement under Rule 8; one position remained unfilled on the grounds that no qualified bids had been received. Rules 7 and 8 provide in pertinent part:

"RULE 7 - PROMOTIONS

A promotion is an advancement from a lower class to a higher class. Subject to applicable qualification requirements set forth in Rule 8, promotions will be based on seniority."

"RULE a - QUALIFICATIONS

File Application.-(a) An employe covered by this Agreement desiring to qualify for a class in which he holds no seniority within his sub-department and seniority district shall file written application of such desire with the individual designated by the Company to receive such notice and with the General Chairman or his designated representative.

Employes who have filed written application, as above referred to, will be accorded cooperation by the employes' immediate supervisor in obtaining on-the-job training in order to acquire proficiency in the class for which application was made.

Examinations.-(b) At periodic intervals when service requirements indicate an expected future need for additional employes to meet the requirements in a class, employes who have filed written application to qualify for service in such class shall, in the order of their first seniority date in the seniority district, and after having passed any required physical and/or written examinations, be accorded a fair chance to demonstrate their ability to meet the practical requirements of the class. An employe meeting the necessary requirements will be furnished a certificate of qualification and accorded a seniority date in the class as of the date when such requirements have been met.

Failure to Qualify.-(c) An employe who fails to meet the necessary requirements shall be advised in writing of the reason or reasons therefor and he shall not be privileged to again make application to qualify for the same class for 90 days, but shall not be precluded from making application to qualify for other classes during such period. An employe may not make application under the provisions of this rule to qualify for a specific class more than twice,"

Petitioner argues that junior employes were assigned to the assistant foremen's positions which was improper under the rules and discriminatory. The main thrust of Petitioner's position is that Claimant was not afforded cooperation in his application for advancement and was not given the opportunity to demonstrate his capacity for the higher position in accordance with Rule 8. Additionally, it is urged, Claimant was never advised that his work was unsatisfactory or that his application for the assistant foreman's class was rejected.

Carrier asserts that it has the right to determine qualification of employes for positions, and this was recognized by Petitioner. Carrier states that Claimant was not qualified for the position of assistant foreman based on the observations of his superiors over the twelve years he served in the same department. Further Carrier denied that Claimant was not given consideration similar to that accorded other employes and states that there is no showing of leadership ability or aptitude by Petitioner.

With respect to the charge that two positions were filled by employes with less seniority than Claimant - presumably with no consideration given to Claimant - we fail to see the relevance of this point. It is clear that one position remained vacant since Carrier felt that there was no qualified applicant, hence the fact that two other employes were promoted has no relation to Claimant's alleged mistreatment by Carrier.

The record of this dispute on the property is singularly devoid of evidence, Carrier on the property stated that by observation of his supervisors Claimant was not qualified for the position of Assistant Foreman. There is no evidence whatever by Petitioner to counter this conclusion nor is there any evidence to support the contention that Claimant was not given consideration, cooperation or the same opportunity that other employes have been afforded in the past. The only fact we may determine with certainty is that Carrier failed to notify Claimant properly of his failure to qualify as provided by Rule 8 (c). Carrier, on the property, denied that it had failed to give Claimant consideration for the promotion and Petitioner has produced nothing but assertion to counter Carrier's statement.

This Board has held over many years that Management has the right to determine the fitness and ability of an employe for a particular position and such determination will not be disturbed unless it can be shown by a preponderance of evidence that Carrier acted arbitrarily and capriciously. Such evidence is lacking in this dispute, even under the special provisions of Rules 7 and 8. It must be noted that promotion to supervisory positions is of particular importance to Carriers and the skill and ability demonstrated in a class within the group does not necessarily qualify an employe for supervision; leadership and supervisory aptitude, at very least, are generally required. Carrier's failure to give proper notice under Rule 8 (c) is not sufficient to overcome Petitioner's omission of any probative evidence to support its allegations. The Claim must be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paul
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.