

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24068
Docket Number MW-24096

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Agreement was violated when positions of miscellaneous machine operator were awarded to trackmen junior to Trackman Charles R. Mitchell (System File 11-1740-40-19-19-P-381-4).

(2) The claimant shall be allowed the difference between what he earned as a trackman and what he should have earned as a miscellaneous machine operator if he had been awarded a miscellaneous machine operator's position beginning October 15, 1979 and to continue until the violation is terminated."

OPINION OF BOARD: This is a fitness and ability dispute in which Carrier promoted junior employees to the position of Miscellaneous Machine operator instead of Claimant. Claimant, a Trackman, applied for the position of Miscellaneous Machine Operator in September of 1979; he had previously attempted to secure the same position in 1977 but had been turned down. There is no question but that at least one employee with less seniority than Claimant was indeed promoted to the position in dispute.

Petitioner alleges that Claimant was unquestionably the most senior employee applying for the position and that Carrier should have given him the opportunity to attain the necessary qualifications and to demonstrate his ability. Further, it is contended that Carrier has not presented the necessary evidence to support its conclusion with respect to Claimant's lack of fitness and ability to handle the job.

Carrier maintains that Claimant failed to take the written examination which was a prerequisite for further consideration for the particular promotion, and in fact has never applied for that examination. In addition, Carrier presented written assessments of Claimant's performance as a Trackman and the opinions of three supervisors with respect to his potential as a Machine Operator. The supervisors' conclusions were that Claimant was slow in both physical and mental reactions in his Trackman's position and could not safely handle the Machine Operator's position.

In disputes such as this, it is well established that once Carrier has presented a rationale for its conclusion that an employee is not qualified for a particular position, it is incumbent on Petitioner to present evidence to establish Claimant's ability (see for instance Award 11279, 10345 and many others). In the absence of a showing that Carrier's conclusion was arbitrary or capricious and did not properly consider Claimant's ability, the

claim must fail. In this **dispute** there has been no **evidence** presented to **establish Claimant's** ability to perform the tasks of the inure skilled position. **Hence**, Petitioner has failed to bear its burden of **proof** and 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** -the **dispute** involvedherein; and

That the Agreement was not **violated.**

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
BY **Order Of Third Division**

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant



Dated at **Chicago, Illinois**, this **14th** day of **December 1982.**