

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24950
Docket Number CL-25153

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9748)
that:

1. Company violated the Agreement between the Parties on December 7, 8, 9, 14 and 15, 1981, when Extra Clerk C. P. Payne, Memphis, Tennessee, was not called for a vacancy as Lift Truck Operator on Position SD-2, in line with his seniority and Rule 9.

2. Company shall now compensate Clerk C. P. Payne for the dates of December 7, 8, 9, 14 and 15, 1981, at the rate of Position SD-2, Lift Truck Operator, \$74.88 per day.

OPINION OF BOARD: The record indicates that on December 7, 8, 9, 14 and 15, 1981 a vacancy existed on Position SD-2, Lift Truck Operator, Materials Department, Memphis, Tennessee. On December 7, 14 and 15, Junior Extra Clerk G. A. Hall worked the position. On December 8 and 9, Junior Extra Clerk R. W. Harris worked the position. On all the claim dates, the Claimant, who had greater seniority than Extra Clerks Hall and Harris was available for call.

The Organization contends that the Claimant should have been given the position on the claim dates. He was the most senior employe available for service at the time. Furthermore, the Organization asserts that the Claimant had, in fact, worked that position on December 10, and 16, 1981. Therefore, the Organization concludes that the Claimant was clearly qualified to assume the duties of Lift Truck Operator and, as the senior employe available, should have been given that vacancy.

The Carrier asserts that the Claimant was not qualified as a Lift Truck Operator and, therefore, should not have been called to fill that position on the claim dates. The Carrier contends that under OSHA Rule No. 29 CFR 1910.178(1), only "trained and authorized operators shall be permitted to operate a powered industrial truck". The Carrier points out that prior to this claim, the Claimant had not received training or company authorization to drive the lift truck.

The controlling provision of the Agreement reads as follows:

"Rule 6 - Promotion

(a) Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability. Fitness and ability being sufficient, seniority shall prevail.

(b) The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

The central issue then is whether the Claimant had sufficient ability and fitness to fill the position of Lift Truck Operator on the claim dates.

The entire record has been reviewed. It reveals that a Lift Truck Operator must have specific training for that position. Claimant did not have that training.

In addition, the record indicates that while Claimant was called to fill this position in the past, he was not allowed to drive the lift truck on those occasions. Instead, he did other laborer duties which did not involve the operation of Carrier's equipment. Accordingly, he was not qualified either by experience or training, to function as a Lift Truck Operator on the days in question.

Our finding is consistent with that of Public Law Board No. 1812, Award No. 45. There the Board concluded that, "Claimant was not qualified automatically for the position in question by the fact that he filled the position on various occasions in the past." Here, too, Claimant's prior occasional filling of the position did not automatically qualify him to actually perform as a Lift Truck Operator on the claim dates. For the foregoing reasons, the claim is 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 Employees involved in this dispute are respectively Carrier and Employee 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 Chicago

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

