

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26595

Docket Number MW-26321

Elliott H. Goldstein, Referee

(Brotherhood of **Maintenance** of Way **Employees**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

1. The Carrier violated the Agreement when it assigned junior **em-
ploye** R. H. Taylor instead of Mr. T. J. Vaughn to the Lubricator Maintainer's position advertised by Advertisement No. 35 dated May 23, 1983 (System Docket CR-426).

2. As a consequence of the aforesaid violation, Mr. T. J. Vaughn shall be afforded the same seniority date in the Lubricator Maintainer's Class as Mr. R. H. Taylor and Mr. Vaughn's name shall be placed on the Lubricator Maintainer's Seniority Roster immediately ahead of Mr. Taylor's name on said roster, thereby signifying Mr. Vaughn's superior seniority in the Lubricator **Maintainer's** class."

OPINION OF BOARD: Claimant established and holds seniority as a **Trackman** and was listed as No. 240 on **Trackmen's** Seniority **Roster** at the time this dispute arose.

On **May** 23, 1983, Carrier issued Advertisement No. 35 advising of a Lubricator Maintainer's position at Huntingdon, Pennsylvania. After a **Track-**man junior to the Claimant was assigned the position, **Claimant** protested and requested an opportunity to demonstrate **his** ability to perform the job. Carrier Officials concluded after observing the Claimant on September 16, 1983, that he was not qualified to use the rail grinder, the tool necessary for the installation of a rail lubricator, and thus Claimant was advised that he was not qualified for the position. Claimant filed a grievance which progressed through the regular grievance machinery, and ultimately the parties agreed that he would be given another opportunity to demonstrate his qualifications as a Lubricator Maintainer.

Claimant's second opportunity took place on August 24, 1984. However, once again he failed to qualify for the position after Carrier Officials concluded that he failed to properly set and operate the grinder or to properly install the universal joint.

The Organization contends that Carrier's test "**was** not fair" in that "all lubricator maintainers, including those with many years of service" were encountering difficulty installing the new type of universal Claimant was required to **install**. In support thereof, the Organization refers the Board to the statement of another Lubricator Maintainer dated October 22, 1984, which indicated that he, too, had difficulty with the installment of the new universal.

Even assuming, **arguendo**, that the difficulty encountered by the Claimant was not typical of that of more experienced employees, the Organization submits that the problem with the universal was a minor mechanical function that should not adversely reflect on Claimant's knowledge of the functioning and assembly of a Lubricator. In the Organization's view, the skill required to install a universal is one that is learned over a period of time, and Claimant should have been given the opportunity to learn and develop all the skill necessary for this position within a reasonable period. It is the Organization's position that "it is the Carrier's responsibility to provide guidance and assistance to an applicant for a position and that said applicant need not be immediately qualified to assume the duties of said position." Thus, the Organization asserts that Carrier violated the Agreement when it failed to afford Claimant a reasonable opportunity to develop the skills required of a Lubricator Maintainer.

Carrier advances two arguments in support of the position that this Claim should be denied. First, it **argues** that the Claim is procedurally defective inasmuch as the remedy requested is not the same as that presented in the original grievance. Second, Carrier submits that the matter of determining an employee's qualifications to perform the work of a particular assignment or a position is the prerogative of Management, and as long as that prerogative has not been exercised in an arbitrary, discriminatory or capricious manner, the Board should not substitute its judgment for that of Carrier in such matters.

After careful review of the record and arguments before **us**, the **Board** at the outset must reject Carrier's procedural argument. Unlike those cases where there is substantial variance between the claim originally filed and the claim submitted to this Board, we note that in this case the claims have the same underlying theory, the rules relied upon are the same, and the facts supporting the alleged violation are the same. Under these circumstances, though an additional form of relief is now requested, we cannot say that the claim submitted to the Board is so substantially different from the one initially filed that it warrants dismissal of the claim. (**c.f.** Third Division Awards 20456, 20279). Therefore, we will proceed to the merits of the case.

On the merits, we concur with the Carrier that whether an employee has sufficient fitness and ability to fill a position is a matter of judgment that is a Managerial prerogative. Unless the Organization can prove that the applicant was competent to perform the position involved or that the Carrier acted in a biased or prejudicial **manner in evaluating** the Claimant's competency, the decision of the Carrier **must** be final. See Third Division Awards 4040, 5966, 6054, 6178. It is also a well-established principle that Carrier can ask the employee to demonstrate fitness and ability, either by examination or on-the-job demonstration, and provided the test is fair, work-related, and other employees have been subjected to the same requirements, the Board will not interfere with the Carrier's determination. (See Public **Law** Board No. 2035, Award No. **9.**)

In this case, the Board finds no evidence in the record which would warrant sustaining this Claim. Carrier permitted the Claimant on two separate occasions to demonstrate his qualifications to perform the requisite duties of a Lubricator Maintainer, and in each instance, he failed to qualify. The Organization has cited no Rule or contract provision which would require the Carrier to do more. Though general claims of "unfairness" were advanced by the **Organization**, the fact remains that Claimant and the Employees agreed to the practical demonstrations before they commenced. The Organization simply has not shown that Claimant is qualified to perform **the** duties of a Lubricator Maintainer, and therefore the subject grievance must fail.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

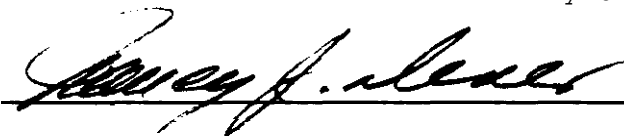
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.