

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27073
Docket No. MS-26700
88-3-85-3-450

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(James C. Harvey
PARTIES TO DISPUTE: (
(Maine Central Railroad Company

STATEMENT OF CLAIM:

"On October 13, 1983, I, James C. Harvey, carpenter for the Maine Central Railroad Company, and member of the Brotherhood of Maintenance of Way Employees, made a timely bid pursuant to the agreement between the above-stated Carrier and Union for the position of crane operator, a position for which I was then qualified.

On October 18, 1983, Maine Central Railroad Company management awarded the crane operator position to M. L. Card, an employee over whom I had seniority, without having first given me the trial to establish my qualifications as a crane operator guaranteed me under Rule 17 of the above-referenced agreement.

WHEREFORE I, James C. Harvey, pray that I be awarded both time and wages paid to M. L. Card since October 20, 1983, the effective date of his tenure as a crane operator, as well as all time and wages to be paid in the future to M. L. Card as a crane operator."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As a result of an October 4, 1983, bid posting, on October 18, 1983, the Carrier, through notice signed by Supervisor B&B L. G. Perkins, Jr., awarded the position of Crane Operator to M. L. Card, an employee junior in seniority to Claimant, rather than to Claimant who also bid on the position. The record indicates that in early 1980 Claimant attempted to become qualified as a Crane Operator, but after two weeks as a student Operator, Claimant voluntarily did not complete the training program because of an alleged personality conflict.

Rule 17 states:

"Promotions shall be based on ability and seniority. Ability being sufficient, seniority shall prevail. The Division Engineer, Engineer of Structures, Signal Engineer or Supervisor Work Equipment shall be the judge as to ability subject to appeal as provided in these rules. Employees bidding for promotion ... within their subdepartment, field and seniority district, will not be disqualified until they have been given a fair trial."

Upon review of the record, we must deny the Claim. "In light of the long line of Awards of this Division it has been decided that fitness and ability determinations rest with the Carrier, unless a showing is made that the determination was arbitrary or capricious." Third Division Award 26379. It is undisputed that at the time the bid was awarded Claimant was not considered qualified for the position. Claimant voluntarily ceased the earlier training which, if successfully completed, would have resulted in his qualification in 1980. On the other hand, the record is undisputed that employee Card was qualified. Indeed, the record shows that Card had been working as a Crane Operator for almost four years. In light of the above, we are therefore unable to find that the Carrier's conclusion that Claimant was not qualified was either arbitrary or capricious. We must therefore defer to the Carrier's determination of fitness and ability which permits the selection of the junior employee Card over Claimant under the terms of Rule 17.

We are unable to conclude that Claimant was improperly denied a "fair trial" for the position within the meaning of Rule 17 so as to dictate a different result. Claimant quit his earlier training period because of an alleged personality conflict. We do not find in this case that the failure of the Carrier to grant Claimant a new trial period subsequent to the posting of the bid equates to a showing that the Carrier violated the requirement of a fair trial under Rule 17. Although Claimant's new bid may have indicated that he changed his mind about his desires to be qualified as a Crane Operator since he removed himself from consideration in 1980 and further, although Claimant is also obviously free through another training period to establish his qualifications for future bids, we nevertheless can find no contractual support for Claimant's argument that the Carrier was obligated to give Claimant another trial subsequent to the posting of this bid when Claimant voluntarily removed himself from earlier consideration for qualification.

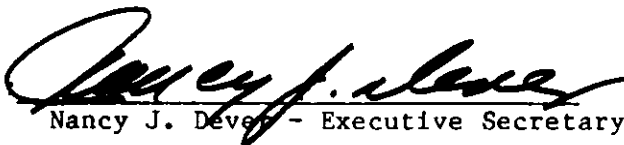
Similarly, the fact that the B&B Supervisor signed the bid award as opposed to the Division Engineer does not change the result. We are satisfied that the B&B Supervisor awarded the bid and made the determination of qualification under the authority of the Division Engineer and we think that under the circumstances of this case such was sufficient within the meaning of Rule 17.

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 17th day of May 1988.