

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

(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 failed and refused to permit Trackman G. E. Altman to displace a junior trackman (J. A. Pigg) on and subsequent to December 12, 1983 (System Docket CR-1233).

(2) Because of the aforesaid violation, Trackman G. E. Altman shall be compensated for all wage loss suffered December 12, 1983 through January 23, 1984."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant, a Trackman with a seniority date of May 1, 1974, was furloughed on December 8, 1983, when his position with Rail Gang 320 was abolished.

On December 12, 1983, Claimant advised the Carrier of his desire to displace a Trackman with a seniority date of October 25, 1976, who was assigned as a "partsman" for an Inter-Regional Dual Rail Train Gang working in District 2 at Canton, Ohio. Carrier did not allow the displacement. Claimant was subsequently recalled to service on January 23, 1984. The instant Claim seeks compensation for the period December 12, 1983, through January 23, 1984, and alleges that Carrier violated the Agreement when it failed to permit Claimant to displace.

Carrier asserts that the matter of determining an employee's qualifications to perform the work of a particular assignment or position is the prerogative of Management, and that as long as such prerogative is not exercised in an arbitrary, discriminatory or capricious manner, this Board should

not substitute its judgment for that of the Carrier. In the instant case, Carrier maintains, the duties and responsibilities of a MW Partsman are specialized and unique, and the incumbent of such a position must be thoroughly conversant with Carrier's ordering systems and inventory in order to properly and efficiently maintain equipment and parts on hand. Inasmuch as the Carrier determined that Claimant was not qualified as a Partsman, and the employees have never proven otherwise, and Claimant never requested to demonstrated his skills, Carrier argues that it was under no contractual obligation to allow an unqualified individual to displace a qualified employee. Carrier stresses that it was not required to allow Claimant to displace a qualified employee and learn the job himself as he went along. A Partsman's duties carry a high degree of responsibility, and Carrier asserts that it cannot leave that position open to chance.

The Organization contends that Rule 4, Section 2 clearly provides that an employee may exercise his seniority to displace a junior employee when his position is abolished, provided he does so within ten (10) days of the abolishment. In this case, Claimant's actions were in accordance with Rule 4, Section 2, and, in the Organization's view, Carrier refusal to permit the displacement violated the Agreement.

Moreover, the Organization argues that Carrier's arguments to the contrary are unavailing. The junior employee was not working as a "Partsman," the Organization points out, since there is no such classification listed within the Agreement. He holds seniority as a trackman, and as such he was subject to displacement by an employee with more seniority. Any other interpretation of the rules would turn the principle of seniority into a mockery, the Organization urges. To deny this Claim would permit Carrier to subvert the seniority provisions of the Agreement by familiarizing junior employees with the duties of a position and then assigning them to such positions ahead of senior employees who would have no right to displace them because of alleged lack of qualification or insufficient skills and abilities. Such an untenable result is not called for here, the Organization submits.

Further, the Organization maintains that Carrier has never stated a single objective reason to support its contention that Claimant was not qualified. In the Organization's view, Claimant was qualified to fill the position in question by the simple fact that he could read and write and demonstrate average intelligence. Claimant may have required a short time to familiarize himself with the duties of the position, the Organization acknowledges, but "fitness and ability" does not mean that the individual is immediately qualified to step in and fill the job without assistance or guidance. The employees submit that the seniority provisions of the Agreement prohibit the Carrier from disqualifying an employee from a position unless the employee fails a fair and objective test of his aptitude for a position after on-the-job training. In this case, Carrier failed to show that Claimant lacked the skills necessary to learn to order parts, and, therefore, the Organization asks that the Claim be allowed.

Rule 4, Section 2(a) and (b) reads:

"Section 2. Exercise of seniority.

(a) Except as otherwise provided, an employee may exercise seniority to a position for which he is qualified:

1. when his position is abolished; . . .

(b) An employee entitled to exercise seniority must exercise seniority within ten (10) days after the date affected. Failure to exercise seniority to any position not requiring a change in residence shall result in forfeiture of all seniority under this Agreement. If he presents evidence to his supervisor that extenuating circumstances prevented the exercise of seniority, the ten (10) days specified above shall be extended proportionately to the extent of his absence on account of such circumstances. An employee who is unable to so exercise seniority and who elects not to exercise other seniority, shall be furloughed."

The issue before the Board in the instant case is whether Claimant falls under the rubric of Section 2(a) as an employee who should have been permitted to "exercise seniority to a position for which he is qualified . . ." The Board in prior awards has clearly articulated the scope of its review of Carrier's determination regarding an employee's fitness and ability to perform a particular job. Illustrative of the many awards is Third Division Award 14040, which states:

"We have considered Rule 2-A-2 and 2-A-3, involving the same parties, in many cases before this Board. It is a well established principle that it is the prerogative of management to determine sufficient fitness and ability. See Awards 14011, 12994, 9324, 8196, 6532, 6028 and others. It is also a well established principle that the burden of proof is on the Employees to show that the Carrier was arbitrary, capricious and discriminatory when it disqualified claimant."

In this same connection, we take note of Third Division Award 6028, which states:

"Whether an employee has sufficient fitness and ability to fill a position is usually a matter of judgment. The exercise of such judgment is a prerogative of the management and unless it has

been exercised in an arbitrary, capricious or discriminatory manner we should not substitute our judgment for that of the management."

The Organization really does not dispute that the foregoing standards and allocation of the burden of proof are equally applicable in this case. Instead, it maintains that the Carrier's determination was arbitrary because Claimant possessed the necessary requisite abilities to perform the job, and should have been given the opportunity for training in order to determine whether he could in fact perform the duties of the position within a reasonable time.

The Board recognizes that these types of disputes are not easily resolved. Seniority provisions, designed on the one hand to give recognition to the right and responsibility of Carrier to manage its enterprise, while on the other hand protecting senior employees, must somehow achieve a proper balance that gives effect to the language of the Agreement as it was intended by the parties. Nonetheless, as the foregoing awards demonstrate, the Board is not without guidance in this area. We adhere to the long-established rule that the Carrier judges an employee's qualifications and the Board is not competent to overturn those determinations unless there is a showing that Carrier acted unreasonably, arbitrarily or capriciously. Based on our review of the record, we find no evidence that Carrier so acted here. It is Carrier's judgment that the duties and responsibilities performed by the junior employee, are specialized, need extensive knowledge, dependability and responsibility, and, as such, require skills and qualifications which go beyond those of a Trackman. Although the Organization disputes Carrier's assessment of the position, it offered no probative evidence to support its contention, nor did it produce any evidence that Carrier's decision was improperly based upon arbitrariness, caprice or discrimination. We therefore must rule to deny the Claim.

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 4th day of May 1989.