

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company (former St. Louis-
(San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it failed and refused to award the position of crane operator (BC-4), as assigned by Bulletin No. R-85-39A, to Mr. D. L. Edel (System File B-2301/EMWC 86-2-18B).

(2) Because of the aforesaid violation, Claimant D. L. Edel shall be assigned to the position of crane operator as assigned by Bulletin No. R-85-39A with seniority as a bridge crane operator dating from November 27, 1985 and he shall be compensated for all wage loss suffered."

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.

The Claimant submitted an application for a position of Crane Operator (BC 4), which was bulletined on October 28, 1985, as a temporary position. The position was awarded to an employee junior to the Claimant, thus giving rise to the Claim herein.

In the course of the Claims handling procedure, the Carrier noted that the Claimant "was in need of extensive training before he can be allowed to operate such a complicated and expensive machine." The Carrier further proposed that if the Claimant "will comply with [making] a written request, making it known that he is desirous of learning and being qualified as a crane operator, he will be given every opportunity to do so."

Ten months later, in October 1986, the Claimant did indicate in writing that he "would like to run a crane." He was provided with training and thereafter was found by the Carrier to be not qualified for the position. Thereafter, another Crane Operator position was bulletined, this one on the BC-7 crane. Based on his former lack of qualification, the Carrier did not offer the Claimant this position and again awarded the position to a junior employee.

The Organization points out that there is no Rule provision concerning the necessity of a written application to be trained. Instead, the Organization relies on Rules 31 and 33, which reads as follows:

"Rule 31. Promotion to Higher Class

Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Carrier as hereinafter provided."

"Rule 33. Ability, Merit and Seniority to Govern Promotions

Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail; the management to be the judge."

Cited to the Board in this instance is Third Division Award 24703, which reads in pertinent part as follows:

"We find insufficient support in this record for reversing the Carrier's determination that the Claimant was not qualified under Rule 33 for assignment to the operator vacancy when he applied. Even though he was unfairly denied the chance to become qualified, we see no compelling basis in this record for nevertheless directing the claimant's placement in the position at this time. We believe that the more reasonable course in these particular circumstances is to direct the Carrier to afford him a fair opportunity to qualify and, if he qualifies, to place him in the position as of the date on which the junior employee was assigned and pay him the amount he would have earned on the position from the date, less any amount he earned in his other employment."

The Claim here before the Board concerns primarily the first denial of the Crane Operator position in 1985. The Board finds no basis to question the Carrier's judgment that the Claimant was not "qualified" at that point.


The Board concurs in the reasoning in Award 24703 as to opportunity to qualify. The Claimant was offered this opportunity some time after his Crane Operator position application, and he failed to qualify. It is thus reasonable to conclude he was not qualified for the BC-7 crane position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.