

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: (
(Soo Line Railroad Company

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

(1) The Agreement was violated when the Carrier recalled and assigned junior furloughed Sectionman T. Bjornstad instead of Sectionman J. Thomas to perform vacation relief work on Crew 328 beginning November 10, 1986 (System File R333 #1552T/800-46-B-273).

(2) As a consequence of the aforesaid violation, Mr. J. Thomas shall be:

'... reimbursed for the equivalent of forty (40) hours pay at the pro rata rate, as well as all overtime that accrued to the disputed position on November 10, 1986; November 11, 1986; November 12, 1986; November 13, 1986; November 14, 1986; November 15, 1986; and November 16, 1986; and shall have all vacation, fringe benefits and other rights restored which were lost to him as a result of the above violation.'

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.

This Claim centers around the Organization's contention that on November 10, 1986, Carrier returned a furloughed Junior Sectionman to service as an Assistant Foreman on Crew 328 in Oakes, North Dakota, thus passing over the Claimant who was senior, available and had shown sufficient ability and

merit to warrant an opportunity to qualify for the position. The Organization argues that Carrier effectively disqualified the Claimant for not complying with its new testing standards without first affording him an opportunity to be tested. Also, the Organization emphasizes, the junior sectionman had not been tested at the time of his recall either. Under these circumstances, the Organization submits that there is more than sufficient evidence for a finding that Carrier acted arbitrarily and capriciously when it disregarded Claimant's seniority rights.

Carrier denied the Claim on the basis that Claimant had not satisfactorily passed the General Code of Operating Rules Examination II and therefore was not qualified to fill the temporary vacancy. It noted that employees were clearly notified that successful bidders for the position must pass such examination and that prior notification of that requirement had been given on several occasions. Further, Carrier maintained that even if Claimant had filled the position on prior occasions, he nevertheless was required to qualify for the position in accordance with the schedule rules. Moreover, contrary to the Organization's assertions, Carrier notes that when the junior employee was called to fill the position on November 10, 1986, he had already been tested and passed the Maintenance of Way Operating Rules Examination. Claimant, by contrast, did not pass such examination until December 22, 1986, well after the dates of Claim.

Upon careful consideration of the record and arguments presented by the parties, the Board finds no evidence which would warrant sustaining the Claim. 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 Carrier acted in an arbitrary, biased or prejudicial manner in evaluating the Claimant's competency, the decision of the Carrier must be final. See Third Division Awards 26595, 4040, 5966, 6054. It is also well-established that Carrier can require the employee to demonstrate fitness and ability by examination, 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 2035, Award 9).

In the instant case, if the junior employee was selected to fill the vacancy without having taken the required examination, there would be a different outcome. However, Carrier's unrefuted submission suggests that the junior employee had taken and passed the examination prior to filling the vacancy while Claimant had not. We note, too, that there is nothing in this record indicating that the examination is unreasonable or unrelated to the determination of fitness and ability. Moreover, employees were clearly advised of this prerequisite when they bid for the position, and apparently notification had been given on several prior occasions. The mere fact that Claimant may have filled the position earlier, prior to the time when examinations were required, does not establish ipso facto, sufficient fitness and ability. Carrier has the right to establish the requirements for any given position, and we must conclude that absent any evidence that the examination requirement was arbitrary or capricious, this Claim must fail.

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 30th day of October 1990.