

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (formerly The Chesapeake  
( and Ohio Railway Company)

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

(1) The Agreement was violated when the Carrier assigned junior employe R. Montgomery instead of D. W. Clark to fill a foreman's position on Force 6G06 at Lynchburg, Virginia from May 3 through 20, 1988 [System File C-TC-4424/12(88-773) COS].

(2) The Agreement was further violated when the Carrier assigned junior employes J. Coffman and K. Ambrose instead of D. W. Clark to fill the foreman's position on Force 6G06 at Lynchburg, Virginia beginning May 21, 1988 [System File C-TC-4454/12(88-773) COS].

(3) As a consequence of the violation referred to in Part (1) above, Mr. D. W. Clark shall be allowed pay for one hundred twelve (112) hours at the straight time foreman's rate and twenty-nine (29) hours at time and one-half foreman's rate.

(4) As a consequence of the violation referred to in Part (2) above:

'Therefore, this will serve to advise that this is to be considered a continuing claim for time. Mr. Clark is to be paid eight hours per day, for each and every day, as well as time and a half for each and every overtime hour, a junior employe works this position. Also, please credit these days toward his vacation qualifying time. \*\*\*'

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 was dismissed from service as of October 16, 1984. Following review of this disciplinary action, the Board in Award No. 26587 directed that the Claimant "be reinstated with full seniority, but without compensation for time lost, subject to his successfully passing an appropriate physical examination."

The Carrier restored the Claimant's seniority in timely fashion, but, according to the Carrier, such seniority was not sufficient to permit his immediate return to duty as a Trackman or a Foreman. He was nevertheless physically qualified for service on March 18, 1988.

The Claimant was also advised that, in order to qualify for service as a Foreman after being out of service in excess of three years, he would be required to take and pass Operating Rules and FRA Track Safety Standards examinations.

Prior to the Claimant's completing such tests, a position as Foreman was filled by a succession of less senior employees commencing May 3, 1988.

It is the Organization's position that the Claimant was improperly denied the opportunity to fill such Foreman's position, claiming that the completion of the examinations is not a normal prerequisite.

The Organization points to Bulletin "R" specifying "Qualification Requirements" for various positions and stating for Foreman only the following:

"Employees assigned must have a valid motor car operators card."

Particularly in view of the Claimant's three-year period of no service, the Board is persuaded that the Carrier properly required completion of the tests prior to Foreman service and that such is not irregular. This is not affected by the specific requirement in Bulletin "R".

This is reinforced by a prior on-property settlement involving seven employees allegedly "required" to take the FRA examination on their own time. While settlement was made favorable to the Claimants therein as to the time spent in taking the examination, there was no dispute as to the Carrier's use of the examination "so they [the employees] would be qualified for positions [foremen and supervisors] requiring this qualification when they became available [in the future]."

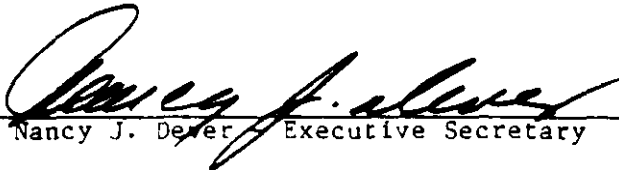
In this instance, there may have been some delay in offering the examination to the Claimant, but the record reveals that the Claimant also shares responsibility for such delay. The Award restoring the Claimant's seniority was properly carried out, and the Claim for Foreman's duties performed by less senior employees is without merit owing to the Claimant not being qualified at the time.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer, Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.