

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Soo Line Railroad 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 assign Mr. D. W. Betry to fill a temporary vacancy as assistant foreman on B&B Crew 603 beginning January 14, 1986 (System File R234 #1627B/800-46-B-234).

(2) Because of the aforesaid violation, Claimant D. W. Betry shall be made whole for all wage loss suffered beginning January 14, 1986 and continuing until the violation is corrected."

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 arose when Carrier judged Claimant, a B&B Carpenter at the time, to be insufficiently qualified to fill a temporary Assistant Foreman vacancy. A junior employee, who was working as a B&B Carpenter Helper, was selected for the assignment.

Claimant had held a B&B Foreman assignment some three years earlier. When his crew was abolished, however, Claimant relinquished his Foreman seniority rather than protect it.

Resolution of the instant dispute focuses initially on the applicable Rules for filling this temporary vacancy. The Organization contends that Rules 4(e), 4(o) and 6(e) grant Claimant preferential consideration for the assignment in accordance with his greater relative seniority. Carrier, on the

other hand, says that Rules 6(a) and 6(b) are specifically directed to the instant situation and mandate that ability, merit and fitness be considered before seniority. In the context of Rule 6(b), seniority shall prevail only when the former three criteria are equal. In addition, Carrier says Rule 6(b) clearly gives it the right to judge relative qualifications. The Organization argues that Rule 6(b) does not apply to temporary assignments and thereby deprives Carrier of the ability to judge relative qualification.

The Organization cited the following Rules:

"4(e) Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service as hereinafter provided."

"4(o) Seniority rights of all employees are confined to the sub-department in which employed, as follows:

* * *

6(e) Except as provided in paragraph (f) of this rule, vacancies or new positions will be filled by employees holding seniority in the rank in which the vacancy or new position occurs. In the event they are not so filled, then they will be filled by the senior qualified applicant in the lower ranks in that seniority group.

* * *"

The Carrier cited Rules are:

"6(a) A promotion is an advancement from a lower rank to a higher rank.

6(b) Employees in these departments will be considered for promotion based upon ability, merit, fitness, and seniority; ability, merit, and fitness being equal, seniority shall prevail, the Management to be the judge."

Upon careful review of the record, we conclude that the Rules cited by both parties are consistent with one another and are not in conflict. Furthermore, we find that the specific, clear language of Rules 6(a) and 6(b) controls the resolution of this dispute.

Rule 6(a) does not, on its face, distinguish between temporary and permanent advancements in rank. In the absence of evidence supporting the contention that temporary advancements are not promotions, and there is nothing but the Organization's assertion to that effect, we conclude that a promotion can be both temporary and permanent. Since both Claimant and the junior employee held seniority in ranks below that of the vacancy, a promotion was involved and, therefore, Rule 6(b) applies.

Carrier based its determination on the prior work record of the Claimant while he served as a B&B Crew Foreman. There is no dispute that Claimant relinquished his seniority in 1982. He was not disqualified.

The Organization argues that, under such circumstances, Claimant must be presumed qualified. In addition, it says it is improper to consider Claimant's past record when it was never formally the subject of discipline. The Organization cites Third Division Award 2864 in support of its contention that prior performance, that was not acted on at the time, cannot be raised for the first time in a later proceeding.

Award 2864 is distinguishable from the instant facts. The record here reflects that Claimant received repeated written communications from management endeavoring to correct Claimant's chronic problems with, primarily, handling supervisory paperwork. It cannot be said that Carrier was ignoring Claimant's substandard performance at the time. Accordingly, we find that his prior performance was a proper subject of consideration by the Carrier when assessing Claimant's qualifications for a similar, albeit temporary, supervisory assignment.


The remaining issue is whether the Carrier properly assessed the relative fitness and ability of the Claimant and the Junior employee. Under Rule 6(B) seniority only prevails when all the relevant considerations are equal. Based on the record, we cannot conclude that the Carrier was unreasonable or abused its discretion when it concluded that the ability, merit and fitness of the Claimant were not equal. Accordingly, the claim will be denied.

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 19th day of December 1991.