

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10456) that:

(a) The Carrier violated the current Somerville Treating Plant Agreement at Somerville, Texas, on February 24, 1989, when they failed and/or refused to assign Otis Upshaw Jr., to Bulletin No. 37, Treating Engineer Position No. 7009, and assigned Junior employee D. J. Rathjen.

(b) Claimant Otis Upshaw Jr. shall now be paid eight (8) hours at the rate of \$13.27 per hour for every day not allowed to work Position No. 7009, or the difference in the rate of position he may have worked on days of Position No. 7009, in addition to any other compensation Claimant Upshaw may have received."

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 Carrier issued a bulletin dated February 17, 1989, advertising a permanent vacancy on a Treating Engineer position at the Somerville Treating Plant. In its Submission to this Board, the Carrier, for the first time, asserted that the position went no bid. However, on the property, the Carrier never refuted the Organization's frequent factual assertion that Claimant filed a bid before the advertising period expired. On the property, the Carrier defended this claim by arguing that Claimant was unqualified to be awarded the position since he had never previously worked the job. According to the Carrier, on February 24, 1989, it assigned the senior, qualified employee in off-in-force reduction status to fill the Treating Engineer position.

Under Rule 6(a) of the March 1, 1980 Timber Treating Plant Agreement, fitness and ability, as opposed to qualifications, are the criteria for determining if an employee, who bids on a position, should be awarded the position. Possessing fitness and ability is not equivalent to being fully qualified for a position. See Third Division Award 27283. If an employee has to be qualified for a position as a prerequisite for being awarded the position, Rule 6(a) would not contain a clause giving an employee, who possesses sufficient fitness and ability, time to qualify for the position. In this case, Claimant possessed sufficient fitness and ability even if he was not immediately qualified for the job and thus, the Carrier violated Rule 6(a) when it rejected Claimant's application and awarded the position to a junior employee in off-in-force reduction status.

The record reflects that one month later, on March 23, 1989, the Carrier again advertised the Treating Engineer position because there was a change in the rest days of the position. An employee different from the one who was awarded the position in February obtained the job. Therefore, Claimant's loss of earnings, if any, lasted for one month.

The Carrier shall pay Claimant the difference between what he would have earned on the Treating Engineer position and his actual earnings for the one month period from February 24, 1989 to March 23, 1989, less any protective pay or guarantees which the Carrier paid to Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.