

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29480
Docket No. MW-28825
93-3-89-3-228

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(
(National Railroad Passenger Corporation
([Amtrak] - Northeast Corridor

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to allow B&B Mechanic M. Mangus eight (8) hours of pay for February 16, 1988 (System File NEC-BMWE-SD-2175).

(2) Claimant M. Mangus shall be allowed eight (8) hours of pay at the B&B mechanic's rate as a consequence of the violation referred to in Part (1) above."

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.

Claimant was employed by the Carrier as a B&B Mechanic in Pennsylvania.

The issue raised in this case is whether the Carrier improperly withheld payment to the Claimant for the date of February 16, 1988, when he spent eight hours exercising his seniority on a B&B Mechanic (Materials) position by taking a qualification test which the Carrier unilaterally established as a prerequisite to fill a vacancy.

The Organization contends that the Claimant is entitled to compensation pursuant to Rule 62, the fact that the Claimant's seniority already entitled him to fill the vacancy on the date in question, and the Carrier's past practice.

The Carrier maintains that the Claimant performed no service on February 16, 1988, that it is not required to pay employees for demonstrating qualifications for a position, that the Claimant was not qualified for the job in question, and no aspect of the Claimant's activities on the date in question is compensable, under the Agreement.

This Board has reviewed the record, and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it did not pay the Claimant eight hours for February 16, 1988. Therefore, the claim must be denied.

The record reveals that on February 16, 1988, the Claimant and several other employees who were displaced and had no assigned position showed up at 7:00 A.M. and requested the right to fill the B&B Mechanic position that was vacant. None of the employees, including the Claimant, was qualified for the position. They were all told that they would have to pass a test before they could be assigned to the vacant position.

The employees protested and left, not returning until approximately 10:30 A.M. When they returned, they stated that they would take the exam. The exam was administered later that day. The Claimant passed the test and filled the position the next morning.

It is fundamental that the Carrier has a right to determine the qualifications of an employee for a particular job. The Carrier is not required to pay an employee who is not yet qualified for a job vacancy. In this case, the Claimant had not yet qualified for the position at issue and, therefore, was not entitled to pay for February 16, 1988. He started working on the position the next day, when he was qualified.

For all of the above reasons, the claim must be denied.

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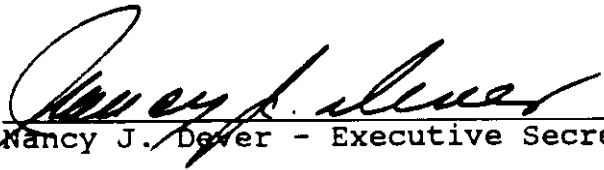
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 21st day of January 1993.