

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29482  
Docket No. MW-28830  
93-3-89-3-231

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

(Brotherhood of Maintenance  
(of Way Employees  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior employe M. E. Campbell instead of Mr. C. A. Rosewicz to the B&B Inspector position listed on B&B Award No. 45 effective November 16, 1987 (System Docket CR-3667).

(2) As a consequence of the aforesaid violation, Mr. C. A. Rosewicz shall be placed on the B&B Inspector Seniority Roster immediately ahead of Mr. Campbell and he shall be compensated for all wage loss suffered as a result of the improper assignment of the B&B Inspector position."

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 employed by the Carrier in the Bridge and Building Department on the Pittsburgh Division.

The issue is whether the Carrier violated the agreement when it assigned a junior employee to fill a bulletined position and denied the Claimant an opportunity to establish seniority as a B&B Inspector.

The Organization contends that the Claimant timely and properly submitted an application to fill the position in question

and completed an application to qualify. The Organization argues that the Carrier refused to allow the Claimant an opportunity to qualify on the Book of Rules, thereby depriving him of the position in question even though he was the senior applicant.

The Carrier contends that the junior employee was the senior applicant who possessed the requisite Book of Rules qualification for the position and he was senior to Mr. Campbell and was properly awarded the position in accordance with Rule 3. The Carrier also contends it has the right to determine who is best qualified to perform the job.

This Board has reviewed the record in this case and we must find that the Organization has not met its burden of proof to establish that the rights of the Claimant were violated.

Therefore, the claim must be denied.

Section I of Rule 3 involving the selection of positions states the following:

"In the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern."

The Claimant admits that he does not possess the current qualifications of the Book of Rules. Consequently, his qualifications were not sufficient to be considered for the position.

The determination of an employee's qualifications for position is for the Carrier to make. The Carrier is not required by the Rules to look at seniority until it has employees who are qualified for the position at issue. In this case, since the Claimant admitted that he did not possess the current qualification on the Book of Rules, there is no necessity for the Carrier to compare the seniority between the eventual selectee and the Claimant. There was no requirement that the Carrier accept the Claimant's request for the position since he did not possess the proper qualifications.

With respect to the argument of the Organization that the Claimant did not have the same opportunity as the other employees to attend the Book of Rules class, this Board finds insufficient evidence to support that position.

Since the Organization has not met its burden of proof in this case, the claim must be denied.

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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.

LABOR MEMBER'S DISSENT  
TO  
AWARD 29482, DOCKET MW-28830  
(Referee Meyers)

The Majority obviously erred in denying this claim. Therefore, this award is palpably erroneous and should not be considered as precedent.

The Majority based its decision on Rule 3, Section 1 which, for ready reference, reads:

"In the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern."

If this was the only provision of the Agreement that dealt with qualifications, perhaps then the conclusion reached could be justified. However, the Majority simply ignored Rule 3, Section 2, which defined qualifications, i.e.,

"In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

and its own requirements stipulated on bulletins, i.e.,

"\*\*\* Senior applicants will be required to demonstrate ability or take examination, written or oral, providing qualifications are not on file." (Carrier's Exhibit 1)

Labor Member's Dissent  
Award 29482  
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Obviously, an employe does not need to be certified as qualified for a position prior to occupying that position. The Carrier clearly recognized this as evidenced by the bulletins. When taken with a total reading of the Agreement, it is clear that Award 29482 is in error and of no precedential value. Therefore, I dissent.

Respectfully submitted,

  
D. D. Bartholomay  
Labor Member