

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30592
Docket No. MW-29488
94-3-90-3-423

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Agreement was violated when the Carrier improperly advertised the material foreman position on Vacancy Bulletin No. 022B dated June 19, 1989 (System File MW-89-91/485-11-A SPE).
- (2) The Agreement was further violated when the Carrier assigned junior employe C.W. Ogburn instead of senior employe C. Garner to the material foreman position advertised on Vacancy Bulletin No. 022B effective July 24, 1989.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. C. Garner shall be assigned to the position in question and he shall be compensated for all wage and seniority loss suffered beginning July 24, 1989 and continuing until the violation in question 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 employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization disputes Carrier's decision on July 24, 1989, to fill the position of Material Foreman in San Antonio, Texas, with an employee junior to Claimant. Claimant, a Track Foreman, had a seniority date of August 6, 1974, while the successful applicant had a date of March 19, 1979. Following a conference to consider Claimant's alleged unjust treatment on August 21, 1989, Carrier did not alter its decision. Carrier noted that its decision as to which employee was qualified had been based on its evaluation of each of the candidates performance of a simple exercise of ordering a switch using the computer and PAMCO.

The position was bulletined on June 19, 1989. Qualifications for the job were listed as follows:

"IN ORDER TO QUALIFY FOR THIS POSITION THE APPLICANT MUST:

1. HOLD SENIORITY AS A TRACK FOREMAN.
2. BE FAMILIAR WITH TRACK AND SWITCH MATERIAL.
3. HAVE A WORKING KNOWLEDGE OF THE PAMCO CATALOG SYSTEM.
4. HAVE A WORKING KNOWLEDGE OF THE SP COMPUTER SYSTEM (TCC AND TIMESHARE)
5. HAVE COMMUNICATION SKILLS IN DEALING WITH THE PUBLIC AND EMPLOYEES ON BOTH THE TELEPHONE AND IN PERSON.
6. HAVE BASIC SKILLS IN MATHEMATICS.
7. SEND THIS BID ON A SEPARATE BID FORM. DO NOT INCLUDE BIDS WITH THE OTHER BULLETIN THAT IS CURRENTLY IN EFFECT."

Particularly at issue is the matter of a working knowledge of the Pamco Catalog System. The Organization maintains that Carrier had afforded the junior employee the opportunity to be trained in the system, while it had not done so with Claimant. Thus, all employees in the class of Track Foreman were not given an equal and fair chance to fill the position. Carrier also indicated at the conference that Claimant was not knowledgeable about the SP Computer System.

The Organization believes that Carrier should have provided training in a school for all those interested in such positions. It also argues that Claimant should have been given thirty days on the job in which to qualify.

In his rejection of the claim, the Superintendent wrote in pertinent part:

"There is nothing in the agreement which prohibits the carrier from listing the requirements for a Bulletined Position. The agreement states that the senior qualified employee in service holding seniority in the class involved, who files bids, will be assigned. The position of Material Foreman required certain qualifications and these were simply stated on the bulletin.

The determination as to whether or not an employee is qualified for a position is a Managerial prerogative based on many factors and determination was made that the successful applicant was the only qualified bidder for the position of Material Foreman.

The requirements and knowledge required for the position of Material Foreman was such that the other applicants would not have been able to qualify within thirty (30) days."

It is Carrier's position that it has the right to establish reasonable standards of fitness and ability in matters of hiring, promotion, and job assignments. Its decision in this instance was neither arbitrary nor capricious.

In a case such as this, the parties' Agreement must be read in its entirety. As Carrier points out, Article 8 (Promotions and Filling of Vacancies) states that "In making assignments to find bulletined positions, the senior qualified employee in service holding seniority in the class involved, who files bid, will be assigned." Numerous decisions of this Board have held that a Carrier has the right to establish the requirements of a position that are reasonably related to the duties of the job and may make an informed judgment as to the fitness and ability of applicants. In doing so under the Agreement, seniority is a key factor.

At the same time, Article 8 also makes provision for giving promoted employees an opportunity to qualify. Section 2(a) reads "Employees promoted and afterward demoted through failure to qualify...." Given this fact, the issue that arises here is whether Carrier erred in concluding that Claimant lacked qualifications for the job and acted unreasonably by denying him an opportunity to prove his proficiency within a specified period of time.

There appears to be no dispute that Claimant did not possess "a working knowledge" of either the PAMCO Catalog System or the SP Computer System (TCC and Timeshare), while the successful bidder did have that knowledge. Given this fact and the bulletined requirements for the Material Foreman's position, it is not unreasonable to conclude that Claimant did not possess the basic qualifications for the job.

This Board finds nothing in the parties' Agreement that requires Carrier to offer standard training programs for employees. Should the Organization wish to have Carrier provide this training, it will have to convince the Carrier of its desirability or achieve this benefit at the bargaining table. While Article 8 does provide for a qualification period for those who are promoted, the Board does not read this Rule to mean that the Carrier must promote unqualified employees and give them thirty days in which to obtain new knowledge or skills. At the very least, the qualification period is a span of time in which employees with basic skills are allowed additional time to polish them, enabling them to become proficient in meeting the requirements of a specific job.

Based upon our review of the parties' Agreement, we find no contractual violation in this instance.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.