

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32279
Docket No. TD-32870
97-3-96-3-187

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"The Burlington Northern Railroad Company (hereinafter referred to as the carrier) violated the current effective agreement between the Carrier and the American Train Dispatchers Department (hereinafter referred to as the Organization), Article IX, paragraph B of the Memorandum of Agreement dated May 3, 1993 in particular when it failed to award claimant T. P. Burns position 321, ACD South based on his 'fitness, ability and seniority.'

Mr. Burns was the senior dispatcher placing application for this position. It is the position of the Organization that Mr. Burns is held from the position of seniority choice.

Therefore, the Carrier shall now place claimant T. P. Burns on position 321, ACD South, based on his fitness, ability and seniority."

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 the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The facts are that Job 321, Assistant Chief Dispatcher (ACD) was awarded to the junior applicant. The Organization contends that the Carrier violated Article X, Paragraph B of the May 3, 1993 Implementing Agreement in failing to comply with the language of the Agreement. The Organization maintains that in the full meaning of the Agreement, Article X limits Carrier to consider fitness and ability and thereafter requires consideration of seniority. In this instant claim, the Organization asserts that the Carrier ignored seniority. The Organization provides several documents as proof that Claimant had previously worked as an ACD and unlike the junior employee had not only qualified on all of the territory supervised by Job 321, but also had ten years more experience. Article X, Paragraph B states:

"In filling ACD positions in the Ft. Worth consolidated office, train dispatchers desiring an ACD position shall file a written application with the designated Company officer. Carrier has the right of assignment from the list of applicants, with consideration being given to fitness, ability and seniority."

The Organization argues that the Carrier failed to comply with the Rule supra, when it advanced a far less qualified junior employee over the Claimant.

The Carrier argues that Claimant was given full consideration in line with the Agreement provision above. It maintains that the Agreement language provides the Carrier with right of selection for ACD positions as long as it affords each applicant consideration in regards to fitness, ability and seniority. The Carrier produces documents to support its position that such consideration was given in this instant case. The Carrier argues that it has the right after such action to appoint a junior employee, as it did here, if in its evaluation the junior employee is considered more qualified. The Carrier denies any Agreement violation.

After a careful review of Article X, Paragraph B and the on-property record as presented by the parties, we find no violation. The language of the Agreement in ACD appointments states that the "Carrier has the right of assignment..." The further

language limits Carrier "with consideration being given to fitness, ability and seniority" from the list of applicants. There is ample evidence in this record that the Claimant was fully considered. The Board has reviewed all documents presented by both parties, but finds the letter from General Superintendent Operations, D. H. Shafer who made the final decision on point. The letter states that all applicants were fully considered taking into account their fitness, ability and seniority. It explains why the junior applicant was ultimately awarded Job 321, including possession of skills in communication deemed important in a centralized office. It explains the process of decision making and the Carrier has included confirming letters from others involved in the process.

In the whole of this case, the probative evidence of a Rule violation is insufficient. The Rule requires consideration, and the Carrier has provided support that proves consideration was given to the Claimant. Although the Claimant was the senior applicant, the evidence that he previously worked the ACD position was refuted. The Organization in this case has failed to prove that the Carrier's decision lacked due consideration including consideration of seniority. Therefore, the claim must fail as lacking evidence that Article X, Paragraph B was violated.

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 7th day of October 1997.