

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35324
Docket No. MW-32563
01-3-95-3-487

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

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

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 Mr. R.C. Gorchik, Jr. to displace Mr. R.L. Morton as a Class II Machine Operator at Abrams Yard, Philadelphia, Pennsylvania on December 13, 1993 and continuing (System Docket MW-3472).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R.C. Gorchik, Jr. shall be compensated at the Class II Machine Operator's rate of pay for all wage loss suffered.”

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 Claimant established and holds seniority in the Maintenance of Way Department. Some 11 months prior to the onset of this dispute, the Claimant sent the Division Engineer the following announcement:

“I am writing to get qualify (sic) on following machinery: MOII Backhoe and MOII Front End Loader.”

From September 27 until December 7, 1993, the Claimant was assigned to Machine Operator Class II (Ballast Regulator). On December 7, the Claimant was displaced from that position, and on December 9, 1993 his employment status was changed to

“furloughed.” On December 13, 1993, the Claimant attempted to displace a junior employee in the Backhoe position on the Adams Yard Retirement Gang. When the Claimant’s request was denied, the Organization submitted a claim contending that:

“On Monday, December 13, 1993, Mr. Gorchik attempted to exercise his seniority to a Machine Operator Class II (Backhoe) position. Supervisor Detterline refused to permit Mr. Gorchik the right to exercise his seniority over the JR employee, claiming that he was not qualified on the Backhoe and could not displace, even though Mr. Gorchik had previously sent a letter, via certified mail, return receipt, to your office requesting to become qualified. Mr. Gorchik was forced to furlough because of this decision of Mr. Detterline.

Clearly, Mr. Gorchik was entitled to exercise his seniority over Jr employees, to any position which he is qualified, especially in view of his written request to your office to become qualified, he therefore, should have been permitted to do so. Further, Mr. Gorchik advised Mr. Detterline of his written request to your office, but to no avail.

The Union would require that Mr. Gorchik be compensated for all time made by the Jr. employee, R. L. Morton, starting with December 13, 1993 and continuing in accordance with Rule 26(f) of the Agreement, at the applicable rate of a Machine Operator Class II, for the days that he was not permitted to displace the Jr. employee.”

The Carrier denied the claim on the premise that Mr. Detterline could not have denied the Claimant’s request as he was on vacation on December 13, 1993. In a second claim letter, the Organization maintained that the Claimant “thought” the supervisor was Mr. Detterline, nonetheless contending that, in accordance with Section 2 of Rule 3, the Claimant had been denied his contractual right to bump junior employee Morton.

In the subsequent denial letter, the Carrier maintained that the Claimant’s request to displace the junior employee was denied because he was “not qualified” as a Backhoe Operator. The Carrier went on to note that the Claimant’s earlier request to “become qualified” as either an MOII Backhoe or MOII Front End Loader Operator did not constitute a request to “demonstrate qualifications” under Rule 3, Section 2. Finally, the Carrier maintained that the Agreement makes no provision for on-the-job training in the operation of machinery.

Rule 3 -SELECTION OF POSITIONS- states, in pertinent part:

“Section 2 - Qualifications for positions:

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."

In that connection, Section 2 of Rule 4 - SENIORITY- sets forth the following:

"(a) Except as otherwise provided, an employee may exercise seniority to a position for which he is qualified."

The Organization alleges that the Carrier was required to permit the displacement at issue, relying on the fact that prior to the attempted displacement, the Claimant had requested, in writing, to "become qualified on the backhoe and front end loader." The Organization's contention that the Claimant's earlier correspondence constituted a viable request to "demonstrate qualifications" under Rule 3, Section 2, supra is not persuasive. On its face, that note was not a request to demonstrate his qualifications on the disputed position as the Organization alleges, but rather, a request to "get qualified" on the machinery used in the disputed position. Perforce, an employee who requests an opportunity to "get qualified," is not yet ready to demonstrate qualifications he is seeking to attain. An employee is not entitled to make a displacement to a position for which he plainly has yet to attain the proper qualifications and there is no showing that the Carrier should be equitably estopped in this case from using the Claimant's lack of qualifications to deny his displacement request. In Third Division Award 33939 the Carrier denied the senior employee's bumping rights by scheduling his "proficiency test" to occur after the displacement deadline had expired. In this dispute, there is no such estoppel at work, the Carrier properly denied the Claimant's displacement request due to lack of qualifications and said denial cannot be considered arbitrary, capricious or inequitable.

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 16th day of February, 2001.