

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21699
Docket Number MW-21421

Robert J. Ables, Referee

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

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

(1) The Agreement was violated when the Carrier failed to provide Class 'B' Carpenter B. E. Guerrero with on-the-job training as a Class 'A' carpenter and when it failed to accord him a fair chance to demonstrate his ability to meet the practical requirements thereof (System File MofW 138-48).

(2) The Carrier further violated the Agreement when it failed to advise Mr. B. E. Guerrero of its reason or reasons for disqualifying him as a Class 'A' carpenter.

(3) Mr. B. E. Guerrero be accorded on-the-job training as a Class 'A' carpenter; he be accorded a fair chance to demonstrate his ability to meet the practical requirements of that class and the disqualification notice dated April 19, 1974 be withdrawn and deleted from his record.

OPINION OF BOARD: This dispute centers around Claimant's disqualification from the position of Class A Carpenter by letter dated April 19, 1974 from his supervisor which reads as follows:

"Mr. B. E. Guerrero:

"You have been accorded an opportunity for qualification under the provisions of Rule 8, Page 9, Class 26 for Class "A" Carpenter on April 19, 1974, and have failed to meet all requirements.

B. J. Pyles
B & B Supvr."

There are several rules pertinent to this dispute, with the most pertinent being Rule 3 (Classes), Rule 5 (Seniority), Rule 8 (Qualifications) and Rule 26(f) (Class and Wage Schedule). In pertinent part, these rules provide:

"Rule 3--CLASSES

Each occupation in the several sub-departments shall constitute a class, and be listed by class in numerical sequence, the lowest number designating the highest class and the highest number designating the lowest class. Such sequence shall be determined by Section (f) of Rule 26."

* * * * *

"Rule 5--SENIORITY

Seniority Established and Confined to Sub-Department---

(a) Seniority rights of all employees are confined to the sub-department in which employed. Seniority of employees in all sub-departments shall be shown by classes and each occupation shall constitute a class. Each class shall be listed in numerical order beginning with number one (1), which shall designate the highest class, and the highest number shall designate the lowest class.."

* * * * *

"Rule 8--QUALIFICATIONS

File Application--

(a) An employe covered by this Agreement desiring to qualify for a class in which he holds no seniority within his sub-department and seniority district shall file written application of such desire with the individual designated by the Company to receive such notice and with the General Chairman or his designated representatives.

Employees who have filed written application, as above referred to, will be accorded cooperation by the employees' immediate supervisor in obtaining on-the-job training in order to acquire proficiency in the class for which application was made.

Examinations---

(b) At periodic intervals when service requirements indicate an expected future need for additional employees to meet the requirements in a class, employees who have filed written application to qualify for service in such class shall, in the order of their first seniority date in the seniority district, and after having passed any required physical and/or written examinations, be accorded a fair chance to demonstrate their ability to meet the practical requirements of the class. An employee meeting the necessary requirements will be furnished a certificate of qualification and accorded a seniority date in the class as of the date when such requirements have been met.

Failure to Qualify---

(c) An employee who fails to meet the necessary requirements shall be advised in writing of the reason or reasons therefor and he shall not be privileged to again make application to qualify for the same class for 90 days, but shall not be precluded from making application to qualify for other classes during such period. An employee may not make application under the provisions of this rule to qualify for a specific class more than twice."

"RULE 26--BASIS OF COMPENSATION.

* * * * *

"(f) CLASS AND WAGE SCHEDULE.

* * * * *

"Bridge and Building Sub-Department

No.	Class	Basic Rate Effective 1-1-74		
		Monthly Rate	Hourly Equivalent	Hourly Rate

* * * * *

26	(Carpenter (Class A)			5.2001
	(Carpenter (Class B)			5.1447
	(Carpenter (Class C)			5.1078

* * * * *

"

Basically, we must decide whether Claimant, who already had standing as a Class B Carpenter, was covered by the provisions of Rule 8 - Qualifications, when he applied for the position of Class A Carpenter on April 17, 1974 and two days later, found such application rejected.

We have given consideration to the arguments of Carrier and the Petitioner here and have concluded that Claimant was entitled to the protection of Rule 8. We do not quarrel with Carrier's argument that Class 26, comprised of Class A, B and C Carpenters, constitutes one class of employees for purposes of seniority and the publishing of seniority rosters. We further do not quarrel with management's statement that it has the right to determine fitness and ability. In fact, in our recent Award 20724, between the same parties and interpreting some of the same rules, we recognized this principle to be controlling.

However, we find that Claimant's application to qualify for a position as Class A Carpenter was properly filed pursuant to Rule 8. We think that a reasonable interpretation of Rule 8, along with the other pertinent rules of the agreement cited above, would be that an employee desiring to qualify for various Classes of Carpenters within the General Class of Carpenters (Class 26) should follow the organized and understood procedures of Rule 8. Otherwise, it would seem impossible for employees entering Class 26 as a Class C Carpenter to ever advance to a higher paying Class A Carpenter.

Considering the foregoing, we have concluded that under the facts and circumstances of this case, management erred when it summarily rejected Claimant's filed application to qualify as a Class A Carpenter and further erred when it did not advise Claimant, in writing, the reason for this rejection, as is required by Rule 8(c). Having considered Claimant's application unacceptable from the outset, Carrier was at least obligated to tell Claimant what requirements he was deficient in so that he could take corrective measures to hopefully meet the minimum requirements when he again submitted his application under Rule 8(a).

As to a remedy in light of these facts and circumstances and the application of Rule 8, the rule clearly recognizes that management retains the right to determine fitness and ability and also distinctly recognizes that it is management's prerogative to determine when the requirements of the service indicate that additional employees may be needed to meet the requirements in a class. Accordingly, we hold that Claimant, if he desires, may file another application for Class A Carpenter pursuant to the provisions of Rule 8(a) and be accorded cooperation in obtaining on the job training by his immediate supervisor. After that, it is axiomatic that Claimant's career path will be subject to the provisions of Rules 8(b) and (c).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in our opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.

