NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23141
Docket Number MW-23052

THIRD DIVISION

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Sand Springs Railway Company

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

(1) The Agreement was violated when, on September 27, October 6, 9, 10, 1978 and on February 1, 9, 13, 21, 23, 27, March 7, 8, 12, 13, 26, 27, 28 and 29, 1979, and on certain dates subsequent thereto, an employe junior to Andrew Flores was used as a trackman-driver (System File S-89).

(2) Claimant Andrew Flores shall be allowed the difference in what he received at the trackman's rate and what he should received at the trackman-driver's rate of pay on the dates referred to in Part (1) hereof."

OPINION OF BOARD: Claimant Andrew Flores is the most senior man on the Sand Springs Railway Company seniority list in the Special Machine Department, a part of the Track Department. He is, however, restricted by the company to the operation of tractors, air compressors, and stationary machinery. This claim arises out of the fact that an employe less senior than claimant has been promoted to work as a truck driver on numerous occasions, while claimant has been bypassed for these promotions.

It is the Organization's contention that based on the scheduled Agreement and on sound labor relations, Carrier has no authority to restrict the type of work that an employe on a certain seniority list can do without demonstrating that the restriction is legitimate.

Carrier contends that it has the right to evaluate an employe's ability and it has made a judgment in the instant case that claimant, because of his limited eyesight, should not drive a vehicle. In addition, because of his negative attitude toward the company, he is not worthy of a promotion. Carrier also argues that it published the seniority list with the restriction noted on July 1, 1978, and that no complaint was lodged by the Organization. Therefore, the claim is untimely filed and should be dismissed by this Board.

The Organization argues that claimant has a valid Oklahoma chauffeur's license and thus meets the required qualification for a driver's job. It further argues that claimant should be given a chance to prove himself in a driver's position. Article IV A & B requires that he be assigned the driver's position in question. Carrier argues that it does not think claimant qualified to be a driver. He has only one eye and he has lost some fingers. Given these limitations, claimant would be a danger to other employes and the public. He would also increase Carrier's liability, if an accident occurred.

This Board is mindful of Carrier's potential liability in a situation such as this and of the litiginous nature of people when they believe they have a valid claim. In spite of this, however, the Board cannot support Carrier's decision that claimant does not possess sufficient qualifications to be promoted to a truck driver's position. He does possess a valid driver's license. Carrier has presented no evidence to demonstrate that claimant, if allowed to drive, would be a threat to safety or health of fellow employes or the general public. Its comment that claimant's attitude and past record demonstrate that he does not deserve a promotion is not persuasive. Nothing contained in the record before us would lead one to arrive at such a conclusion.

It is the Opinion of this Board that claimant does possess the basic qualifications to perform a truck driver's job. Nothing has been presented by Carrier to demonstrate otherwise. Under Article IV of the Agreement, the most senior qualified employe for a promotion must be granted that promotion. In the instant case, Carrier chose not to advance claimant to the driver's position. Based on the record before us, this Board has concluded that Carrier was not justified in this action.

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

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.