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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24192
Docket Number MS-24323

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Robert J. Sullivan
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice as required by the Rules of the National Railroad Adjustment Board, Third Division, of Robert J. Sullivan to file an Ex Parte Submission 30 days from day of this notice covering an unadjusted dispute between Robert J. Sullivan and the Conrail involving the question:

1. Carrier violated the Telegraphers Agreement dated September 1, 1949 Articles 10 and 33, also the Interim Agreement dated February 26, 1976 Rules A-1 and A-5 among others, when it awarded the Field Terminal Supervisor position at Bridgeport, Ct. to a junior employee Mr. J. Daddona, without consideration to the Qualifications and/or Seniority of Mr. Robert J. Sullivan, a senior employee who has held at least 9 article 33 positions and possessed more than sufficient qualifications to this position. At the time of said appointment Mr. Daddona had no special expertise nor superior qualifications for the position in spite of the carrier's claim of recent mechanism and computerization of agency operations and same is discriminatory and in clear disregard of the customs and practices of the carrier in similar situations.

2. Carrier shall be required to compensate Mr. Sullivan the difference in the Guarantee pay which he has received since the time of the filing of this claim and the rate of pay of the Bridgeport position as a continuing claim until rectified."

OPINION OF BOARD: This is a claim for the difference between the Guaranteed protected rate which Claimant was paid and the rate of Field Terminal Supervisor, an Article 33(c) excepted position, which he was denied. Claimant made application for the position, but it was awarded to a junior employee, who, in Carrier's opinion had superior fitness and ability. Article 33(c) reads:

"(c). It is recognized that the duties attached to these positions require that in filling them, consideration must be given to qualifications or eligibilities separate and apart from the qualifications referred to in Article 10(e)."

Article 10(e) reads:

"(e). Rights to positions are based on qualifications and seniority; qualifications being sufficient, seniority will govern."

The issue presented for decision in this case has been considered by this Division in many previous awards including Award 19555 (Lieberman) where we said:

"The Division has considered a number of disputes between the same parties involving the application of Rule 15 of the applicable agreement. In Award 15387 (Dorsey) we held that Rule 15 vests Carrier with the absolute right to determine qualifications with finality. See also Awards 15784 (McGovern) and 15929 (Ives).

It is well settled that the Board must apply agreements as written and may not, through the guise of interpretation, attempt to amend or alter the terms thereof. Under the clear provisions of Rule 15 the Board is precluded from substituting its judgment for that of the Carrier in the selection of employes for positions filled under the provision of that rule. We have no alternative but to deny the claim."

The issue presented must necessarily be determined on the basis of the controlling agreement and in accordance with the interpretation placed upon that agreement by the parties thereto. Applying this principle, we find the claim to be without merit and it will, accordingly, be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

