

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25698
Docket Number CL-25507

Frances Penn, Referee

PARTIES TO DISPUTE: (*Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees*
(*Terminal Railroad Association of St. Louis*

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9874)

that:

"1. Carrier violated the Clerks' Rules Agreement when it refused to assign Mr. D. L. Waltman to vacancy of Operator/Leverman Swing Job No. 109, on August 29, 1983, but instead, assigned junior Extra Board employe, C. J. Pickett. (Carrier's file 013-297-13)

2. Carrier's action was arbitrary and violative of the Agreement due to the facts involved.

3. Carrier shall now be required to compensate Mr. Waltman (Claimant) for the difference between compensation actually earned and that of Leverman/Operator Position No. 109, effective August 29, 1983, and continuing five (5) days per week due to Carrier's arbitrary and unreasonable action."

OPINION OF BOARD: The basic facts underlying this Claim are not in dispute. The Carrier advertised Leverman/Operator Swing Job No. 109 by bulletin. No bids were received from regular assigned employees. The Carrier assigned the Junior Extra Employee, C. J. Pickett whose seniority date was February 23, 1963, to the vacant position. The Carrier did not assign the Claimant, D. L. Waltman, the Senior Extra Employee whose seniority date was January 1, 1963, because he had not passed the examination on the operating rules.

The Organization contends that the Carrier violated provisions of Rule 17, the Amendment to Memorandum of Agreement No. 13 and Rule 4 in failing to assign the Claimant to Job No. 109. Rule 17 provides:

"When forces are increased or bulletinable vacancies occur, furloughed employes shall be returned to service in the order of their seniority rights. Failure to return within seven (7) calendar days after being notified by mail or telegram sent to the last address given or to give satisfactory reason for not doing so, will terminate their employment relationship.

The Amendment to Memorandum of Agreement No. 13 reads:

"Whenever temporary or permanent positions are bulletined in any district and there are no bids from regularly assigned employees, the senior Extra Employee will be assigned.

Rule 4(d) reads:

"Employees required to qualify on positions will be paid the rate of the position while qualifying in accordance with present practice.

The local supervisor will be the judge as to the number of days qualifying time allowed."

The Organization argues that under Rule 17 no qualification can be required by the Carrier of employees being recalled from furlough. If there was a question of qualification after he had been assigned, then the procedures in Rule 4(d) would apply. It has been, the Organization states, the Carrier's historic practice to assign employees as Leverman/Operators and then determine whether or not they are qualified. The Organization states that the Carrier's decision was arbitrary and unreasonable.

The Carrier contends that its action in not assigning the Claimant to the job was justified because he had not taken and passed the Carrier's examination on the Operating Rules. The Carrier cites Rule (c) and Rule 718 of the Terminal Railroad Association of St. Louis Operating Rules, effective May 1, 1975. Rule (c) provides:

"(c) Employees must pass the required examinations."

Rule 718 states:

"Leverman Operators"

"718. They will...familiarize themselves with the rules and general instructions;..."

The Carrier maintains that knowledge of the Operating Rules, which govern the movement of trains and rail equipment through the interlockers, is a basic requirement for assignment to the position of Leverman/Operator. Classes on the Rules to prepare for the exam were announced in January, February, March, April and May and held each month after that on the second Monday of each month. Twelve additional classes were held for those who wanted to qualify as Leverman/Operator. Between February and December of 1983, the Rules examination was given twenty times. The Claimant did not take any of the classes or the exam. Since an employee assigned to Job No. 109 would also have to learn the physical operations of three work locations, the Carrier states that it would be nearly impossible for an employee who did not already know the Rules to qualify on the job within the 30-day period established for qualification under Rule 9 of the Agreement. The Carrier states that under Federal Railroad Administration regulations it may require an employee to take and pass Operating Rules examination before they are eligible to assume the duties of a position or break in on a position.

After careful review of the record, the Board concludes that the Organization has failed to produce evidence that it was the Carrier's practice to assign Leverman/Operator positions to employees and then ascertain afterwards whether the employee could meet the qualifications. The Board finds that the Claimant, by his own voluntary actions, prevented the Carrier from assigning him to Job No. 109. The examinations were given repeatedly with classes provided by the Carrier to prepare for them. The Bulletins issued by the Carrier made it clear that passing the exam was necessary for those who wished to be Leverman/Operators. For example, the January, 25, 1983 Notice stated: "This Rules Class is for the purpose of qualifying Clerical people in the Towers, and anyone who thinks they may need to be qualified for Tower positions." The Bulletin continues.: "I reaffirm, anyone, who may need these rules to protect their seniority in the Tower should avail themselves of the opportunity,..." The Claimant knew of the requirement, was given the opportunity to qualify himself for Job No. 109 and chose not to do so. In Fourth Division Award No. 3999 the Board stated:" The Board finds that the Claimant was himself responsible for being withheld from duty, since knowledge of and qualification in standard rules is a reasonable prerequisite to performance of duty..." Under the circumstances in this instance the Board finds no evidence that the Carrier's action was arbitrary or unreasonable.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and 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;

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 14th day of November 1985.