

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26433
Docket Number MW-26320

Elliott H. Goldstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it promoted junior Welder M. J. McNabb instead of Lead Welder G. Louis to the position of Welding Gang Foreman on Gang 72 effective October 17, 1983 (System File 220-8-833/11-1740-40-46).

(2) Because of the aforesaid violation Mr. G. Louis shall be afforded a Welding Gang Foreman's seniority date of October 17, 1983 on the Western Lines and he shall be allowed the difference between what he would have been paid at the Welding Gang Foreman's rate and what he was paid in a lower rated position from October 17, 1983 until the violation is corrected."

OPINION OF BOARD: This is a fitness and ability dispute in which Carrier promoted a junior employe to the position of Welder Foreman on Gang 72 instead of the Claimant. Claimant, who had been a Lead Welder for ten years at the time this dispute arose, has been employed in Carrier's service since April 1, 1955. There is no question that an employe with far less seniority than Claimant was promoted to the position at issue in this case.

The Organization alleges that Claimant was unquestionably the most senior employe applying for the position and that, because of his long years of experience as a Lead Welder, he clearly had sufficient ability to perform what the Organization views as the nearly identical duties of the Foreman's position. Further, it is contended that if there was any doubt as to Claimant's abilities, Carrier should have given him an opportunity to demonstrate his qualifications in accordance with Rule 8(c) of the current Agreement.

Carrier maintains that in order to be considered for promotion to position of Welding Gang Foreman, an employe must possess not only technical knowledge of welding work but also qualities of leadership, managerial ability, and the ability to plan and organize work. According to the Carrier, Claimant's past record and work performance shows that he did not and does not possess these qualities.

A review of the record shows no basis upon which the Board can sustain the Claim. As the Carrier's uncontroverted evidence indicates, Claimant's past record shows that between May, 1962, and August, 1983, he was disciplined for eight instances of Rule violations. Moreover, his ability to properly supervise and expedite work programs has been subject to criticism by his superiors.

The various Divisions of the National Railroad Adjustment Board have consistently held that it is the Carrier's prerogative to determine the fitness and ability of an employe for a position and once it is determined that an employe lacks sufficient fitness and ability, the employe has the burden of coming forth with evidence of substantial probative value to support his contention as to fitness and ability. See, Third Division Award Nos. 4687, 6142, 15494, 16871, 19129, 20361, 21243 and 24068. In Award No. 24068 which involved a similar dispute between these parties, the Board held that:

"In disputes such as this, it is well established that once Carrier has presented a rationale for its conclusion that an employe is not qualified for a particular position, it is incumbent on Petitioner to present such evidence to establish Claimant's ability (see for instance Award 11279, 10345 and many others). In the absence of a showing that Carrier's conclusion was arbitrary or capricious and did not properly consider Claimant's ability, the claim must fail."

In the instant case, there has been no evidence of probative value that Claimant indeed possessed the requisite fitness and ability, or that Carrier's judgment was unreasonable, arbitrary or capricious. Claimant's length of service and experience as Lead Welder, though factors to be considered, fall short of carrying the burden of persuasion the Organization bears in a case such as this, particularly when weighed against Claimant's far from exemplary performance record.

Nor does the Board agree that Carrier violated Rule 8(c) of the prevailing Agreement. This provision of the Agreement states:

"Section (c) - Failure to Qualify. An employe accepting promotion who fails within twenty-five (25) work days to satisfactorily perform the duties of the higher class will be disqualified and may return to his former class and position; employes displaced thereby to have the same rights."

Unlike Third Division Award No. 22357 cited by the Organization, where the Board concluded that the employe should be given the opportunity under Rule 8(c) to gain experience learning the particularities of the new job, the Carrier in this case has not unreasonably concluded that Claimant does not possess the requisite leadership skills necessary for a foreman. Given the fact that, as a foreman, one must know and abide by the Carrier's rules so as to set an example for employes under his supervision, we cannot say that this deficiency on the Claimant's part is something that could be rectified in 25 days or that Carrier acted arbitrarily in refusing to allow Claimant to qualify under Rule 8(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;

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

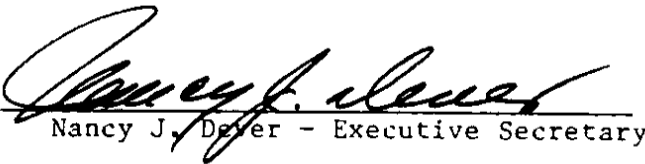
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.