

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Burlington Northern Railroad Company (former  
( St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it assigned junior Trackman M. A. Beckley instead of Trackman J. Mitchell to the assistant foreman's position on Regional Tie Gang T-2-11 (System File B-1524/EMWC 85-7-18E).

(2) As a consequence of the aforesaid violation, Mr. J. Mitchell shall be assigned to the position referred to in Part (1) hereof as of April 25, 1985 and he shall be compensated for all time Trackman M. A. Beckley is permitted to work the assistant foreman's position on Regional Tie Gang T-2-11."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant's seniority as a trackman is September 11, 1974. However, when the Carrier required an employee to fill a temporary Assistant Foreman's position, it did not advertise the vacancy but assigned it to a junior employee. Approximately three weeks later the Carrier issued a bulletin advertising the position and once again the Carrier selected the junior employee rather than the Claimant. At a later time, the Carrier cancelled the assignment to the junior employee advising that "no qualified bids" had been received. Nonetheless, the Carrier continued to allow the junior trackman to fill the position.

The pertinent rule provides that promotion shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail. That rule has been interpreted by the parties to provide that management shall be the judge.

The Organization argues that under Rule 31, since no employee holding seniority as an Assistant Foreman bid on the vacancy, Carrier was required to fill the position by considering the senior qualified employee in the next lower classification which, in this case, was that of trackman. Since the Claimant was the senior qualified trackman, he should have been assigned the position.

The Carrier notes that the Claimant had no prior Assistant Foreman qualification - nor did any of the other applicants - which prompted the Carrier to cancel the bulletin the day after it was initially filled. However, the junior trackman continued to perform work on a temporary basis until the position was abolished on May 13, 1985.

Under numerous Awards in this industry, the Carrier, in the first instance, makes determinations of fitness and ability. If a Carrier determines that an applicant is not fit for the position, it is appropriate for that employee to show that the Carrier's decision is erroneous.

The Organization seems to suggest that the Claimant should have been given the temporary position in the first instance, and in that manner he would have gained experience and therefore his qualifications would be evident.

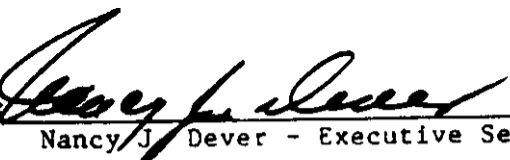
However, as we review the record as developed on the property, we fail to find that the Claimant made any showing that he was qualified for the position even in a "prima facie" sense. To be sure, the Chief Engineer's declination letter stated that the junior applicant was a "better candidate" at the time which could indicate that he was "comparing" the two individuals rather than making an initial determination of the Claimant's qualifications. However, an entire review of the record as developed on the property fails to demonstrate to the Board that the employee possessed an ability and qualification for the job. Thus, the Carrier's failure to award the position to him is not, in our view, arbitrary or capricious.

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 2nd day of February 1989.