

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28137
Docket No. MW-27828
89-3-87-3-330

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

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 improperly withheld Mr. G. C. Fillyaw from his position as relief welder foreman beginning December 16, 1985 (System file 100-8-863/11-1740-20-5).

(2) Claimant G. C. Fillyaw shall be allowed the difference between what he should have been paid at the relief welder foreman's rate and what he was paid at the welder helper's rate beginning December 16, 1985 and continuing until he is returned to his position as relief welder foreman."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

In its claim letter of February 6, 1986, the Organization stated:

"Effective December 2, 1985, Mr. D. P. Valentine reinstated Claimant Fillyaw with the wording 'As discussed, I am willing to permit Welder Fillyaw to return to service of the company with his seniority and other rights restored effective December 2, 1985.' The Division Engineer (Southern Division) and Welding Supervisor (Western Lines) circumvented this wording by refusing to let Claimant return as a Welder but required him to return as a Helper, giving the reason that Claimant had not written the new Book of Rules and passed the test. Claimant has since found out that the majority of Welders on the Western Lines (Old Gulf Lines)

have not written the book and passed the test but are still working as Welders. This is outright discrimination. Claimant has not been advised that he has been disqualified under Rule 8 as a Welder but is being withheld from a Welder's position."

Carrier responded:

"I have been advised that all employes on the Western Lines holding seniority and working as Welder Foremen or Welders have been required to write the book of rules and then take and pass the required examination. On March 7, 1986, the Claimant Fillyaw was instructed to write the book of rules and then return same to the Carrier for grading after which he will be scheduled to take and pass the required examination. As of the date of this letter, the claimant has not written the book of rules."

The Organization argues Carrier has neither denied nor refuted the contention of the Organization that "the majority of Welders on the Western Lines (Old Gulf Lines) have not written the book and passed the test but are still working as Welders." Contrary to the Organization's argument Carrier almost immediately stated all Welder Foremen or Welders had been required to pass the examination and this Board finds no record evidence in support of the Organization's position that such was not the case. We consistently hold mere assertions unsupported by evidence insufficient to establish a Claim.

The Organization looks to the following Rules for support:

"8 - (c) - Failure to Qualify.

An employe who accepts promotion to a higher class but fails to satisfactorily perform the duties of the higher class within twenty-five (25) work days will be disqualified. This employe will return to his former position in accordance with Rule 5. All employes affected thereby will be governed by Rule 5.

An employe who is assigned more than twenty-five (25) work days to a position will be considered qualified.

An employe who fails to pass the examination(s) or who is otherwise disqualified, shall be advised promptly in writing, with copy to the General Chairman, as to the cause or causes of his failure to qualify."

and

"RULE 5 - DISPLACING RIGHTS OTHER
THAN FORCE REDUCTIONS

Upon...

- (7) Being reinstated to service after having been dismissed, other than leniency reinstatement under Rule 13,

* * *

the returning employee, within seven (7) calendar days after being released for duty, may assume his former position unless abolished or taken by a senior employee, or exercise seniority rights on any position in the same class bulletined during his absence."

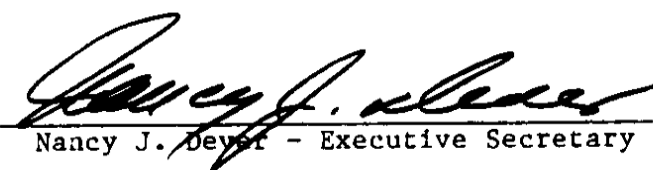
Suffice to say, Rule 5 was not alleged or argued in handling on the property and Rule 8(c) deals with disqualification of a promoted employee and has no application to the case at hand.

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 16th day of October 1989.