

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company
(formerly the Colorado and Southern Railway Company)

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

(1) The Carrier violated the Agreement when it failed and refused to assign Mr. P. J. Davenport to the track inspector position advertised by Bulletin No. 118 dated August 7, 1986 (System File BN-86-23/DMWD 870102).

(2) Mr. P. J. Davenport shall be assigned to the track inspector position in question and he shall be compensated for all wage loss suffered as a consequence of the violation referred to in Part (1) hereof."

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 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.

Claimant bid on a position as Temporary Track Inspector. He was initially informed that he had been awarded the position. However, before being assigned to the position, the Claimant was advised that he was not "qualified" for the position under Federal Railroad Administration Track Safety Standards, Subpart A-General, Section 213.7, which reads in pertinent part as follows:

"§213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) Each track owner to which this part applies shall designate qualified persons to supervise restorations and renewals of track under traffic conditions. Each persons designated must have--

(1) At least--

(i) One year of supervisory experience in railroad track maintenance; or

(ii) A combination of supervisor experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance;

(2) Demonstrated to the owner that he--

(i) Knows and understands the requirements of this part:

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this part.

(b) Each track owner to which this part applies shall designate qualified persons to inspect track for defects. Each person designated must have--

(1) At least--

(i) One year of experience in railroad track inspection; or

(ii) A combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection; . . ."

The position of temporary Track Inspector was subsequently reposted and assigned to another employee.

The Organization does not contend that the Claimant met the FRA standard prior to placement in the position. The Organization does argue, however, that Rule 23 requires the Carrier to provide the Claimant with "reasonable opportunity . . . to qualify" during an initial 30-day period.

The Carrier contends that the FRA track inspection standards prohibit the placement of an employee who does not meet these qualifications as a Track Inspector. Further, the Carrier points out that Rule 23 refers only to employees who are "awarded bulletined positions." The Carrier contends that the Claimant was not actually awarded the position, once the Carrier had notified the Claimant that he was not qualified.

The Carrier's position is somewhat clouded by the fact that, as noted by the Organization, the successive Carrier denial letters refer to FRA standards for "supervision" rather than that of track inspection. The Board finds, nevertheless, that the Carrier may properly find support for its position in the FRA standards. These require, in the absence of one year in track inspection, that the employee have a "combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection." (Emphasis added)

The Carrier attempted to obtain some clarification of the regulations. The FRA Regional Director responded as follows:

"This part of the Track Safety Standards is explicit and needs no further interpretation. It is up to you and Burlington Northern to qualify track personnel to supervise restorations and renewals and to inspect track."

This response does not directly support the Carrier's position in this instance. Whether the Carrier can or should provide such training for employees before the actual assignment is a matter not before the Board for review. It is possible to conceive a situation where there is no previously qualified employee available for a position as Track Inspector. It appears, however, that such was not the case in this instance.


Taken literally, it is entirely reasonable to find that the Claimant could not meet the specific conditions required by the FRA within 30 days. Thus, the Board cannot fault the Carrier in its judgment.

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 7th day of August 1990.