

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago, Central and Pacific Railroad 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 compensate Trackman R. Frazee at 100% of the trackman's rate during the period December 19, 20 and 21, 1988.

(2) Because of the aforesaid violation, the Claimant shall be allowed the difference between what he was paid at 80% of the trackman's rate and what he should have been paid at 100% of the trackman's rate during the period December 19, 20 and 21, 1988."

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.

Claimant established seniority as a trackman on May 13, 1988. He was promoted and qualified as a machine operator on June 16, 1988, and promoted and qualified as a welder helper on October 24, 1988. On December 16, 1988, Claimant was furloughed. Prior to actual furlough, he requested and was granted three personal leave days, which were taken on December 19, 20 and 21, 1988. When Claimant received payment for the personal leave days it was at 80% of the trackman's rate. His Claim before this Board seeks payment at the full rate - 100%.

Rule 5 of the Agreement provides for entry rates of pay of 80 and 90 percent during an employee's first 24 months of service. Paragraph (e) of Rule 5 states:

"(e) Entry rate will not apply if employee is promoted, and qualified by management."

Carrier contends that the intent of the paragraph is to compensate an employee at 100% when that employee is promoted, not once promoted or has been promoted. The Organization argues that the language can only be read to mean that if an employee is promoted and qualified the entry rate will no longer apply.

It is our view that the interpretation placed upon the language of Rule 5(e) by the Organization is the correct construction. Rule 5(e) provides that two conditions must be present before entry rates will not apply - "promotion" and "qualified by management." These two conditions manifestly suggest that when entry level employees are promoted and qualified the training aspect (the bedrock justification for entry rates) is concluded.

To adopt the Carrier's view it would be necessary to ignore the phrase "and qualified by management" as well as read the phrase "is promoted" as "while promoted." The phrase "is" as used in the Rule must be read with a past signification, as in the sense of "has been." (In this regard see 48 Corpus Juris Secundum at page 774.) When "is" is read as "has been" and has been promoted is wedded to "qualified by management" with the conjunctive "and," only one conclusion is valid - entry rates will not apply after promotion and qualification by management.


The Claim has merit and will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.