

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30203
Docket No. MW-28476
94-3-88-3-276

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(National Railroad Passenger Corporation
((Amtrak) - Northeast Corridor

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

- (1) The Carrier violated the Agreement when, effective February 9, 1987, it was awarded the B&B Foreman position advertised as position 01-ACLB-0187 to junior employee D. Sandte instead of Mr. T. Douglas. (System File NEC-BMWE-SD-1773).
- (2) As a consequence of the aforesaid violation, Mr. T. Douglas shall be awarded the B&B Foreman position in question and his seniority in the B&B Foreman class shall be adjusted accordingly."

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 employee 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.

This case arises from a Claim that Carrier violated the seniority provisions of the Agreement when it awarded a B&B Mechanic (Carpenter) Foreman position (advertisement number 01-ACLB-0187) to employee D. C. Sandte effective February 9, 1987. Claimant, who is senior to Mr. Sandte, asserts that he should have been awarded the position in question.

The record reflects that qualification for the B&B Mechanic (Carpenter) Foreman position in question is established by passing a standard examination for the position. It is undisputed that Mr. Sandte had previously taken and passed the standard qualifying exam on January 7, 1987. It is also undisputed that the Claimant did not take the qualifying exam. Carrier contends that Mr. Sandte was the senior qualified employee making application for the position.

The Organization takes the position that the Carrier's actions in this matter violated the Agreement in that the Carrier did not offer the Claimant an opportunity to take the B&B Mechanic Foreman examination or to demonstrate his qualifications for the position; that Claimant's established seniority right entitled him to preferential consideration for the position at issue; and that Claimant's prior service as a B&B Assistant Foreman, as well as a B&B Welder Foreman, is indicative of his ability to qualify as a B&B Foreman. Because Carrier's actions were arbitrary and violative of the Claimant's rights, the Carrier should be required to grant the Claimant a B&B Foreman seniority date effective February 9, 1987.

Carrier's position is that the determination was made that the Claimant was not qualified to perform the duties of the position at issue; that the Organization made no showing that this determination was wrong by offering evidence that Claimant possessed the required qualifications; and that Claimant has no entitlement, contractual or otherwise, to the job award or roster date sought in this case.

After careful study of the record in its entirety, we find that the Organization failed to prove that Carrier violated the Agreement in the instant case. Rule 1, provides in pertinent part, that "in the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern." Awards emanating from this Board and others have established certain principles which are applicable in the context of these seniority cases. First, the determination of an employee's qualifications, and whether that employee has sufficient fitness and ability to fill a position, is a managerial prerogative which will not be overturned absent proof that Carrier's actions were arbitrary or capricious. See Third Division Awards 4040, 5966, 6054, and 6178. It is also well established that fitness and ability can be demonstrated by examination or on-the-job demonstration, and the Board will not interfere with the Carrier's determination unless there is a showing of unreasonableness. See Third Division Award 26595.

In the instant case, Carrier awarded the position at issue to the employee who, at the close of the bulletining period, was on record as having qualified. In our view, this constitutes a rational basis for the selection.

This Board finds unpersuasive the Organization's contention that Claimant's greater seniority in and of itself gave Claimant superior rights over the junior employee for the B&B Mechanic Foreman position. The Organization's assertion that strict seniority prevails for higher rated jobs within the Foreman class is inconsistent with the language of the Agreement and prior Awards of this Board. (See Third Division Award 28254). Qualifications must be deemed sufficient before seniority becomes a determinative factor, as we read the Agreement.

The Organization's remaining arguments really focus on its belief that Carrier should accept and consider other means of experience in determining an employee's qualifications. Thus, in the Organization's view, it was highly relevant that Claimant previously worked as a B&B Mechanic Assistant Foreman and before that, as a Welding Foreman. However, as stated above, this Board is not in a position to say that the requirements established by the Carrier are arbitrary or capricious. Carrier had determined that a candidate must pass an exam to qualify for the position, and Claimant had neither taken nor passed the required qualifying examination. Claimant had no preferential right to the job by virtue of his seniority or prior experience.

It was the Organization's obligation to develop all essential elements necessary to support the Claim that a violation of the Agreement occurred as alleged. It is our finding, in line with prior Third Division Awards 14040, 6028, 6178 and Public Law Board No. 3781, Award 14, that this burden has not been met in the case at hand and the Claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.