

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30669
Docket No. MW-29490
95-3-90-3-426

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when, effective April 21, 1989, the Carrier assigned junior employe R. J. Dobbelare instead of Mr. R. W. Hobbs to the machine operator position (EX02M) headquartered on line in the vicinity of St. Louis, Missouri (Carrier's File 890565 MPR).
- (2) As a consequence of the aforesaid violation, Mr. R. W. Hobbs shall be allowed:

'...payment of the difference in the rate of pay from Trackman Driver to Machine Operator, for 40 hours per week, including any overtime incurred on the EX02M, from Wednesday, April 12, 1989, continuing thereafter, until such time that claimant is placed on said machine, as his seniority would allow.'"

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.

On April 7, 1989, Carrier advertised a Machine Operator vacancy on Machine EX02M. Claimant, a Roadway Machine Operator who was working as a Trackman-Driver as the result of a force reduction, bid on and was denied the position. An employee junior to Claimant was awarded the bid.

It is the Organization's position that Carrier failed to give Claimant thirty days in which to prove his qualifications, in accordance with Rule 10 (Promotion) and Rule 1 (Seniority Datum), as well as by practice on the Carrier of training employees on the job. The Organization believes that given Claimant's successful performance doing machine operating work in the past, on a variety of equipment, he did not lack initiative in learning. The Organization also argues that this work, which was being done for the purpose of maintenance of way, falls within the scope of the parties' Agreement and does not belong to another craft (that is, IUOE Heavy Equipment Operators).

Carrier cites Maintenance of Way Rule 2001:

"Only employes who have been properly qualified or those working under the supervision of a qualified employee, are permitted to operate roadway machines or work equipment."

Carrier contends that Claimant was unqualified to operate a yard cleaner. Rule 11(b) is the controlling Rule here:

"(b) When vacancies bulletined under this rule are not filled by reason of no bids from qualified employes, the position will be filled by (1) appointment of the senior unassigned employe in the class, whether furloughed or working in a lower class,..."

The successful junior bidder, a Machine Operator, was a qualified yard cleaner. Claimant, who was working in a lower class, was entitled to consideration only when Carrier did not receive bids from a qualified employee in the class. Further, when the Carrier exercises its right to assign positions based on fitness and ability, the Organization has the burden to prove a Claimant's qualifications. It did not do so in this instance. Carrier contends that the machine in question is normally assigned to another craft and that the Organization has no claim to the work in question.

This Board notes that at the time of this dispute, another claim was pending concerning the proper jurisdiction for this work. We shall therefore not address that matter. As to the question as to whether Carrier violated the Agreement when it assigned the junior employee to the disputed position, this Board can find no basis in the Agreement for reaching that conclusion.

The Board does not view this case as one of a promotion and thus does not see the relevance of Rule 10, which addresses that issue and provides for a thirty-day qualification period. Rule 11(b), on the other hand, is more on point. It states that bulletined vacancies will be filled by a senior unassigned employee working in a lower class only after there is no bid from a qualified employee. Claimant was working at the time in a lower class and there is no evidence to suggest that the junior employee, a Machine Operator, was not qualified. Under the terms of the Agreement, the bid was properly awarded to him.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.