

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31201
Docket No. MW-31385
95-3-93-3-393

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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 the Carrier advertised and awarded temporary Truck Operator 6T + District position (Long Haul Vehicle), effective February 21, 1992, to junior employee F.L. Roberson instead of Mr. D.D. Duren (Carrier's File 920389 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D.D. Duren shall be compensated for:

'all wage loss suffered between that of Trackman and Long Haul Driver, from February 21, 1992, to continue until rectified, and that Claimant be placed over Mr. Roberson on the proper 6T + roster, with a seniority date of February 21, 1992.'"

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.

The Carrier advertised a temporary vacancy as a truck driver in the six ton plus category. It assigned an employee junior in seniority than Claimant. Neither had seniority status for the category advertised.

The Organization has challenged Carrier's assignment, seeking damages in an amount equal to the difference in what Claimant would have made, had he been assigned and what he has made working in lower classifications.

The burden of proving one's case is no different in fitness and ability disputes than it is in any other Rules cases. The Organization must establish that the Claimants qualifications were sufficient to allow his seniority to prevail.

The Carrier accepted the assertions that Claimant met the basic qualifications for the position, but that he was short on ability as the junior employee had over-the-road truck driving experience whereas Claimant did not. Nor was Claimant experienced in driving a truck the size and nature required or handling loads in the weight range required. Further, Claimant had no experience in dealing with scales or permits in the various states nor had he the experience in loading or securing loads for hauling.

The aforementioned position of the Carrier was outlined in the last letter in the file and it was in response to the claim appealed to the Carrier Officer authorized to handle claims as final appeal.

The Organization has not challenged Carriers definitive explanation of why it rejected Claimant's application for the position. Rule 10(a) reads, in pertinent part:

"*** ability and merit being sufficient, seniority shall prevail ***"

The Carrier has cited several awards in support of its position. Specifically, Award 59 of Special Board of Adjustment No. 279 involving the Maintenance of Way Employees and the former Missouri Pacific Railroad which involved the same Rule.

In that Award it is said that:

"*** What this claim actually amounts to is a request by the Employees that we substitute their judgment for that of Management as to the sufficiency of Claimant's ability to fill the new position. Under Rule 10(a) this is not possible ***"

What is said in the aforequoted portion of the Award is incorporated herein.

The Organization has not established the basics of its case. It has not shown that Carrier's determination that the ability of the Claimant was insufficient to be promoted to the advertised position was in anyway arbitrary or faulty in reason.

AWARD

Claim denied.

ORDER

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 1st day of November 1995.