

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45065
Docket No. MW-46645
24-3-NRAB-00003-210635**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to award and assign Mr. B. Gonzalez to a bulletined trackman position on Gang V- 404 effective March 10, 2020 (System File S2008K-081/BMWE 11/2020 KLS).

(2) As a consequence of the violation referred to in Part (1) above, the Organization requests that Claimant B. Gonzalez’s seniority be properly dated for Trackman Position 2276-KCS-0220 and listed on the Trackman Roster in accordance with the Collective Bargaining Agreement and he be fully compensated for any missed compensation for that position.

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 were given due notice of hearing thereon.

Factual Background:

Bidding for bulletined positions is controlled by Rule 8 of the collective bargaining agreement between the parties. It states, in relevant part:

Employees desiring bulletined positions must file written application with the Carrier official signatory to the bulletin within seven (7) days after the bulleting is posted and positions will be awarded to the senior qualified applicant effective no later than fourteen (14) days after the bulletin closed. This rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days after effective date of award.

Position of Organization:

The parties' Agreement contains no restriction against employees bidding from B&B to track during their first year of employment. No other bids were received for the position, so it is clear that Claimant was the senior qualified bidder.

On November 10, 2020, Director of Labor Relations MaryAnn Lemon sent a letter to Assistant General Chairman S. Swain: "Although there have been times where employees have been able to bid between the two sub-departments, the CBA does not demonstrate that this is a necessary or valid practice."

Position of Carrier:

The Carrier notes that under Rule 5(3): "Seniority is confined to the sub-department in which employed." It identifies two sub-departments: Track and Bridge and Building. Rule 5(4) provides that "Assignment to positions covered by this Agreement will be based on qualifications and seniority; qualifications being sufficient, seniority will govern."

The Carrier explicitly informs employees upon hire that employees may not transfer out of their department within the first year of their employment. That is because the

Carrier does not deem new employees qualified to change departments within their first year. The first year gives an employee the opportunity to demonstrate his/her skills so the Carrier can evaluate their qualifications for future transfer requests.

Since Claimant had not completed his first year, he was not qualified to bid out of his department. The qualification at issue was clearly presented to Claimant when he was hired. Until he achieved that minimal experience, he was not qualified for any position outside of his department. MBCR, PLB 7007, Case No. 14 (April 9, 2009, Meyers) has determined that it is within the Carrier's discretion to determine who is qualified.

Analysis:

The Organization has produced proof that in the past, employees in their first year of service were allowed to transfer between departments. The record includes a myriad of examples. There is no contractual prohibition against first-year movement between departments.

The Carrier's attempt to characterize a prohibition against such first-year transfers as a 'qualification' is unpersuasive. It is clear that this service has not consistently been viewed as a needed qualification. This Board is certainly willing and ready to defer to managerial discretion in determining and requiring appropriate qualifications for particular positions. We are deeply committed to recognizing and enforcing managerial prerogatives in this regard. However, the broad-brush characterization of a year's experience as a 'qualification' for any job in either department bears no relation to specific duties or skills needed for successful performance.

The articulated explanation is that the requirement gives an employee the opportunity to demonstrate his/her skills so the Carrier can evaluate their qualifications for future transfer requests. This, by definition, does not establish any sort of qualification to perform in either department. The Carrier can establish and evaluate qualifications and relative experience either before or after a 12-month period of employment. The Organization has characterized the one-year restriction as arbitrary. We agree.

Claim sustained in accordance with findings. Claimant's seniority will be properly adjusted to reflect Trackman Position 2276-KCS-0220 as of March 10, 2020 and he will be listed accordingly on the Trackman Roster. He will be compensated for any

difference in straight time compensation actually worked in the time between March 10, 2020 and issuance of this award. Claims for other remedy are hereby denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of October 2023.