

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

Brotherhood of Maintenance of
Way Employees

-and-

National Railroad Passenger
Corporation(AMTRAK)

Case No. 11
Award No. 9

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second of the Railway Labor Act and the applicable rules of the National Mediation Board.

The Brotherhood of Maintenance of Way Employees and the National Railroad Passenger Corporation(AMTRAK) (hereinafter the Organization and the Carrier respectively) are duly constituted labor organization and carrier representatives as those terms are defined in Section 1 and 3 of the Railway Labor Act.

On October 8, 1979, a hearing was held in the Carrier's offices in Philadelphia, Pennsylvania at which the below-stated claim was addressed:

STATEMENT OF CLAIM:

"(a) The Carrier violated the Rules Agreement effective May 19, 1976, when it refused to accept bid of Carpenter Helper J.E. Warren for an Assistant Foreman Position, but instead awarded such position, effective August 30, 1977, to a junior employee.

"(b) Claimant Warren be assigned to the position to which his seniority entitles him and be compensated at the difference in rate between that of an Assistant Foreman and the position he held for each day commencing August 30, 1977 until so assigned."

Claimant first acquired seniority with the Carrier as a Carpenter Helper on August 18, 1976. He subsequently bid upon and was awarded positions as a Painter Helper and a Painter. At the time that three(3) permanent positions of Assistant B & B Foremen were advertised by the Carrier, August 16, 1977, the Claimant was holding a position as a Painter in Gang No. 113 at the Carrier's Carpentry Shop in Morrisville, PA. The Claimant bid on the position of Assistant Foreman and the Carrier awarded the three(3) Foremen's positions to employees each of whom was junior to the Claimant.

The Claimant grieved the Carrier's action and the Organization progressed his grievance through the appropriate steps in the procedure prior to the submission of the claim to this Board for resolution.

The relevant rules in the collective bargaining agreement between the Organization and the Carrier provide:

"RULE 1 - ASSIGNMENT TO POSITION

In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern.

The word 'seniority' as used in this Rule 1 means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority roster."

"RULE 2 - QUALIFICATIONS FOR POSITIONS

In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

It is the position of the Organization that the above-cited Rules and Rule 10-Seniority, which provides that "Seniority begins at the time the employee's pay starts", required the Carrier to award the Claimant the Assistant Foreman's position. The Organization

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further contends that Claimant should have been awarded the position based upon his seniority and that if the Carrier had any qualms about his ability to perform the job Rule 2 offered the way to resolve the matter.

It is the position of the Carrier that no rules of the agreement have been violated; that the Claimant has not sustained the burden of proof regarding his qualifications to hold an Assistant Foreman's position; and, that Claimant is not entitled to any compensation as he has claimed none.

It is clear that seniority will govern where qualifications of several bidding employees are first sufficient. In the case before us the Carrier found that the Claimant's qualifications were not sufficient and therefore he was not awarded one of the positions upon which he bid.

The Carrier did find that the other bidders had sufficient qualifications and thus they were awarded the jobs they bid upon even though they were junior to the Claimant.

The Claimant has not shown that the Carrier's actions in awarding these Assistant Foremen positions was arbitrary, capricious and/or discriminatory.

In fact, the Carrier has shown that on two separate dates, April 24, 1978 and February 12, 1979, the Claimant was offered the following opportunity:

"Rule 2 of your Agreement clearly states that
'In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on request, or may be required, to give reasonable, practical demonstration of his qualifications to perform the duties of the position.'

Our records do not indicate that Claimant Warren has ever requested in writing the opportunity to demonstrate his qualifications to perform the duties of these positions.

* * *

" However, the Carrier is agreeable to allow the Claimant an opportunity to demonstrate his

qualifications, if he so desires, provided he makes application to do so through his immediate supervisor."

The Claimant, apparently, never attempted to demonstrate to the Carrier his ability or qualifications to perform the duties of the job upon which he bid. The rules gave the Claimant the right to make this showing; he chose not to do so.

Thus, we find that the Carrier did not violate any of the Claimant's rights under the applicable rules of the collective bargaining agreement.

AWARD

Claim denied.

Richard R. Kasher
Richard R. Kasher,
Chairman and Neutral Member

William E. LaRue
William E. LaRue,
Organization Member
P.L. Board No. 2406

S.H. Heltzinger
S.H. Heltzinger,
Carrier Member
P.L. Board No. 2406

DATE: _____

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