

PUBLIC LAW BOARD NUMBER 3445

Award Number: 30

Case Number: 30

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Track Repairman Helper, James Copeland, P. O. Box 412, Hamilton, GA 31811 filed claim for time. Employee request difference in pay from August 29, 1983 and continuing until Claimant is allowed the position of track repairman.

FINDINGS

Claimant, at the time of the dispute in question, was employed by Carrier as a track repairman helper. By letter dated October 3, 1983, the Organization filed claim on the basis that Claimant was wrongfully denied the opportunity to qualify for a vacant position as track repairman.

The issue to be decided in this dispute is whether Claimant was entitled under the Agreement to qualify for the position in question.

The Organization asserts that Claimant was wrongfully denied an opportunity to qualify for the track repairman's position advertised by Carrier on June 28, 1983, contending that Claimant properly bid on the position, and therefore deserved at least a chance to qualify. The Organization further contends that

Carrier's subsequent closing of the position on July 21, 1983, on the basis of no qualified applicants, violated Claimant's right under the Agreement to prove his fitness for the position.

The position of the Carrier is that Claimant had no right to qualify for the position in question, and was therefore properly denied an opportunity to do so.


Carrier contends that Rule 12(b) of the Agreement grants an employee a right to qualify for a position only if he is a "qualified employee holding seniority in the rank and seniority district in which the vacancy exists." Carrier argues that Claimant did not have seniority in the rank of track repairman, and therefore was not entitled to the position in question. Carrier further argues that Rule 12(b) requires that an employee already be "qualified" before bidding for the position. Carrier contends that Claimant was clearly not "qualified" for the position, and cites statements of Track Supervisors G. R. Miles and J. R. Wall to substantiate its contention concerning Claimant's competence. Finally, Carrier contends that the Organization's claim is based on the premise that Claimant should have been allowed to qualify while on the position, further indicating that he was not presently qualified. Carrier maintains that the Agreement nowhere requires that an unqualified employee be given a chance to qualify for a vacant position, and that Claimant's bid was therefore properly rejected in all respects.

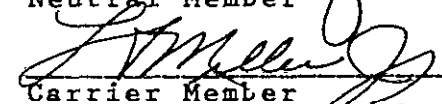
After review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed to meet its burden of showing any violation of the Agreement with regard to Claimant's bid for the position. Rule 12(b) clearly mandates that an employee must possess rank seniority in order to have a "right" to bid on the position. Rule 12(b) further requires that an employee, in the absence of specific rank seniority, may bid on a position if he is "qualified." The Organization has failed to establish either that Claimant had rank seniority or that he was qualified for the position. The Organization has further failed to establish any contractual obligation on Carrier's part to allow an unqualified employee to qualify for a vacant position.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

DATE:

Oct. 1, 1987