

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad

STATEMENT
OF
CLAIM:

1. The disqualification of Mr. E. C. Nelson as machine helper on Force 5565 was improper and without just and sufficient cause [System File P/R Nelson, E. C./12-8 (82-1152) K2].

2. As a consequence of the aforesaid violation

(a) Mr. E. C. Nelson's personal record shall be cleared of all reference to said disqualification;

(b) Mr. E. C. Nelson shall be allowed a machine helper's seniority date as of December 28, 1981 and he shall be allowed to promptly exercise such seniority;

(c) Mr. E. C. Nelson shall, subsequent to the exercise of seniority referred to in Part 2(b) hereof, be allowed to exercise his seniority on any bulletined position in Rank 4 - Machine Operator to which his helper's seniority would have entitled;

(d) Mr. E. C. Nelson shall be allowed a seniority date in Rank 4 as of the same date other employees were promoted to a Rank 4 position between the date

of his disqualification as machine helper and the Rank 4 - Machine Operator's seniority date referred to in Part 2(c) hereof;

(c) Mr. E. C. Nelson shall be compensated for all wage loss suffered.

FINDINGS:

Claimant, a trackman with a March 22, 1973 seniority date, was assigned on December 28, 1981, subject to his ability to qualify, to the position of Helper on T&S Force 5565, a highly mechanized production gang with timbering and surfacing components.

According to Carrier, the Helper position had for years been utilized as a training position towards qualification in such higher classifications as machine operator or foreman. It was expected, Carrier maintains, that employees assigned to Helper positions would eventually relieve machine operators and assistant foremen when necessary in the surfacing component.

In Carrier's view, claimant was given a fair chance to demonstrate his fitness for the position of Helper, but failed to show satisfactory progress in operating machines on which he would eventually have to be qualified. He was given an additional 30 days after the regular 60-day training period had elapsed, to qualify but, in Carrier's judgment, he continued to show no relevant progress toward qualifying as a Helper. He was accordingly disqualified and returned to his position as Trackman.

Petitioner insists that claimant satisfactorily served as Helper during the trial period and that there was no valid

basis for requiring him to show progress towards qualifying in the much higher rated positions of machine operator and assistant foreman.


The assignment to Helper was a promotion for claimant and it is well settled that, where a promotion is involved, Carrier possesses the right to determine fitness and ability. There is insufficient evidence in the record to show that Carrier's appraisal of claimant's ability to fill the Helper position in Force 5565 was arbitrary and capricious. Nor has it been established that Carrier did not require other Helpers in that Force to perform the same type of work required of claimant or that the particular duties in question were unreasonable requirements.

In that posture of the record and since Rule 12 of the Agreement provides that promotion shall be based on ability as well as seniority, no sound basis is perceived for interfering with Carrier's decision.

AWARD:

Claim denied.

Adopted at Jacksonville, Florida, May 30, 1985.


Harold M. Weston, Chairman
Carrier Member
Employee Member