

PUBLIC LAW BOARD NO. 4431

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

BURLINGTON NORTHERN RAILROAD COMPANY

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: Case No. 3
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STATEMENT OF CLAIM

1. The Agreement was violated when, beginning May 8, 1986, the Carrier assigned Group 3 Machine Operator J.E. Resutek to the position of Group 1 Machine Operator (High Rail Truck Crane BX15-0023) headquartered at Tacoma, Washington, instead of assigning the Claimant, who was senior, qualified and available thereto.

2. As a result of the aforementioned violation,

... we request that the position of Group 1 machine operator High Rail Truck Crane X15-0023 be assigned to Claimant D.J. Kick. We also request that Claimant be allowed the difference between Group 1 machine operator rate of pay and the rate of pay of the positions to which he has been assigned since 5-8-86. We also request that Claimant be allowed any and all overtime worked by junior employee J.E. Resutek since that date.

We further request that Claimant be allowed a Roster 1 Group 1 machine operator seniority date of 5-8-86 and be so listed on the appropriate seniority rosters. We also request that J.E. Resutek not be allowed a Roster 1 Group 1 machine operator seniority date as a result of this erroneous assignment.

OPINION OF THE BOARD

Claimant D.J. Kick holds seniority as a Group 3 Machine Operator in the Roadway Equipment Highway Department. His date is July 5, 1979. J.E. Resutek holds seniority as a Group 3 Machine Operator. His date is August 6, 1980. J.E. Resutek also holds seniority as a Group 2 Machine Operator. Claimant does not. In April 1986, Carrier solicited bids for a Group 1 Machine Operator position. Sixteen bids were received. No bidder held Group 1 seniority. J.E. Resutek was the most senior Group 2 Machine Operator who bid the Group 1 position. He was awarded it on that basis.

Petitioner contends that since no Group 1 Operators bid the posted job, it should have gone to the most senior bidder from all other seniority rosters, not the most senior bidder on the Group 2 roster.

Carrier contends that in similar situations, in the Seattle Region, it has always awarded jobs as it did on this occasion. It considers the promotion ladder for Machine Operators to be Group 3 to Group 2 and Group 2 to Group 1. The complexity, the size of the machines, and skill required to operate them dictates such a progression.

Petitioner relies on Rule 22 A for its support. That Rule reads as follows:

RULE 22. ASSIGNMENT PROCEDURE

A. Each new position or vacancy bulletined as provided in Rule 21 will be assigned to the senior qualified applicant who holds seniority on the seniority roster from which the position in question is filled and in the rank of that position. In the absence of such applicants, the senior qualified applicant in the next lower rank and in succeeding lower ranks, if necessary, on the same roster will be assigned. Except as otherwise provided in this Agreement, in the absence of qualified applicants from the seniority roster of the position in question, the senior qualified applicant from other seniority rosters in the same sub-department will be assigned.

While Carrier has stated that Roster 1 has no ranks as specified by Rule 22(A), this Board sees no reason why Roster 2 should not be considered as the next lower rank when filling Roster 1 positions. This record reveals that Carrier's application of Rule 22(A) in regard to filling Group 1 and Group 2 vacancies is appropriate. Rule 22(A) does not address the specifics of the Machine Operator roster. Absent clear language on the subject, a reasonable application of the rule is acceptable. The practice has been to award jobs in Group 1, as Carrier did in this case.

Petitioner has not persuaded this Board that a legitimate practice in this area did not exist.

AWARD

The Claim is denied.

R.E. Dennis

R.E. Dennis, Neutral Member

Bruce M. Glover

Bruce Glover, Employee Member

Maxine Timberman

Maxine Timberman, Carrier Member

May 3, 1989

Date of Approval