

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5244

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| BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES |) | |
| |) | Case No. 22 |
| and |) | |
| |) | Award No. 17 |
| NORTHEAST ILLINOIS REGIONAL COMMUTER |) | |
| RAILROAD CORPORATION (A PUBLIC CORPORATION) |) | |
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Martin H. Malin, Chairman & Neutral Member
R.C. Robinson, Organization Member
J.S. Morse, Carrier Member

Hearing Date: January 28, 1994

STATEMENT OF CLAIM:

1. That Carrier's decision to disqualify Mr. R. Carpenter as a work equipment mechanic on May 1, 1992 was arbitrary, capricious and in violation of the Agreement.

2. As a consequence of the violation referred to in Part (1) above, Claimant R. Carpenter shall be assigned to the work equipment mechanic position and he shall be compensated for all wage loss suffered as a result of said violation.

FINDINGS:

Public Law Board No. 5244, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties

to the dispute were given due notice of the hearing thereon and did participate therein.

On April 21, 1991, Claimant was awarded the position of work equipment mechanic. Claimant had bid on the position in response to an April 1, 1992 bulletin. Claimant was not released from his prior position until Friday, May 1, 1992.

On May 1, 1992, Claimant reported to the equipment mechanic position. He was given a two-cylinder diesel engine and a manual and told to troubleshoot the engine and make the repairs necessary to get it running. Claimant asked to be allowed to borrow the manual for the weekend and to take the test the following Monday. His request was denied. Claimant was unable to get the engine running by the end of the day and he was disqualified from the position.

Carrier has given the same test to employees who bid into the equipment mechanic position since October 1988. Claimant testified that he was aware of the test. Claimant further testified that he had no prior experience with diesel engines but had some prior experience with gasoline engines.

Claimant contends that his disqualification violated Rules 7(B) and 8(D).

Rule 7(B) provides:

When making assignments, the senior applicant of the rank bulletined will be awarded the position subject to the demonstration of his ability to meet the requirements of the position within thirty (30) calendar days after the date reporting to the position. If the employee fails to qualify within this period, the position will be declared vacant and rebulletined, and the disqualified employee, having been notified in writing the reasons therefor, will return to his former position if it still exists or has not been claimed by a senior employee exercising displacement rights, in which event such employee shall exercise general displacement rights.

Rule 8(D) provides:

Employees accepting promotion will be given a fair chance to demonstrate their ability to meet the requirements of the position. If the employee fails to so qualify within thirty (30) calendar days after the date reporting to the position, the position will be declared vacant, and the employee, having been notified in writing the reasons therefor, will return to his former position if it still exists or has not been

claimed by a senior employee exercising displacement rights, in which event such employee shall exercise general displacement rights.

Claimant contends that Rules 7(B) and 8(D) provide for a period of thirty calendar days in which to demonstrate his fitness and ability for the position. During this period, Carrier is obligated to provide training and assistance. In contrast to the requirements of the Agreement, Claimant argues, Carrier gave him a one-day qualifying period and no training.

Claimant contends that Carrier did not give him a fair opportunity to demonstrate his ability when it denied him the opportunity to borrow the manual for the weekend and take the test the following Monday. Furthermore, Claimant argues, Carrier never advised him that the position required a qualifying engine troubleshooting test until he reported to the position. For all of these reasons, Claimant contends that his disqualification was arbitrary and capricious. Claimant finds support for his position in PLB 3781, Award No. 36, and Third Division Awards Nos. 8197, 14672, 16960, 19934, and 21067.

Carrier contends that Claimant was given a fair opportunity to demonstrate his basic abilities by taking the test on May 1, 1992. Carrier emphasizes that the test was fair and evenly applied since its inception in October 1988. Carrier contends that the test determines basic abilities and after passing the test, an employee is given the requisite training to enable him to fully qualify for the position within the thirty day period.

The Board finds that Carrier did not violate Rules 7(B) and 8(D) by disqualifying Claimant because he failed the engine test on May 1, 1992. The Agreements at issue in the Awards cited by Claimant provided for seniority to govern promotions and assignments when fitness and ability were sufficient. Rule 7(B), on the other hand, provides for the bulletined position to be awarded to the senior bidder, "subject to the demonstration of his ability to meet the requirements of the position within thirty (30) calendar days. . . ." Thus, under Rule 7(B), the senior bidder is awarded the position but must then demonstrate that he will be able to fully qualify for the position within thirty days.

Nevertheless, the Board finds the Awards cited by Claimant to be instructive. They consistently hold that sufficient fitness and ability do not require actual experience, but merely require sufficient ability to raise a reasonable probability that the employee will be able to fully qualify within the specified time period. Similarly, Rule 7(B) awards the position to the senior bidder, subject

to his demonstrating sufficient ability to raise a reasonable probability that, with appropriate training, he will fully qualify within thirty calendar days.

Carrier's Roadway Equipment Supervisor described the test as follows:

The tasks required in that test require less than one day and it's adequate time to do the test. If you can't do the test in that time period as basic as they are, you will have a very hard time picking up on the rest of what we have to teach you or the tasks assigned to you. . . . [B]asically if you can read the book, it's a very simple operator's manual to that engine, it gives you the troubleshooting guide and step-by-step procedures. If you can read the book and follow the sections, you can fix the engine.

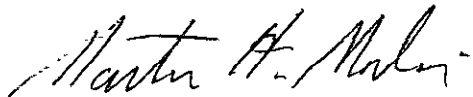
The Equipment Supervisor's uncontradicted testimony established that the test was a reasonable first step whereby, consistent with Rules 7(B) and 8(D), the Claimant was given an opportunity to demonstrate his ability to meet the requirements of the job within thirty days. His inability to repair the engine by following the step-by-step procedures in the manual, made it unlikely that he would be able to benefit sufficiently from the training that would follow to ultimately assume full responsibility for the job.

The question remains, whether Carrier denied Claimant a fair chance to demonstrate his ability when it refused his request to be allowed to study the manual over the weekend. The record does not establish unfair treatment. Claimant testified that he was aware of the test and that he had studied a diesel mechanics book to prepare for it. In requiring Claimant to take the test on the first day he reported, Carrier was following its standard practice and not treating him differently from similarly situated bidders. The elementary nature of the test, read and follow step-by-step troubleshooting guidelines, coupled with the fact that Claimant was not singled out for treatment different from other similarly situated bidders, leads us to conclude that Carrier did not violate Rule 8(D) by denying Claimant the weekend to study.

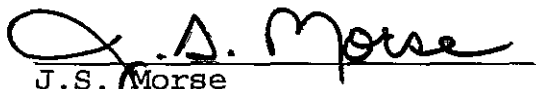
We find that Carrier did not shirk its responsibility to train Claimant for the position. Rather, Carrier gave Claimant a fair chance to demonstrate his ability to benefit from the training and a fair chance to demonstrate the reasonable likelihood that he would qualify for the position following the training period. Claimant was unable to do this. Consequently, we are unable to find that Claimant's disqualification was arbitrary or capricious.

AWARD

Claim denied.



Martin H. Malin, Chairman



J.S. Morse
Carrier Member



R.C. Robinson,
Organization Member

Dated at Chicago, Illinois, February 21, 1994.