

**BEFORE PUBLIC LAW BOARD NO. 6378**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)**

**Case No. 1**

**STATEMENT OF CLAIM:**

Claim on behalf of Claimant Edward P. Daly for the appointment to the position of a Network Instructor on the New England Division.

**FINDINGS:**

Claimant Edward P. Daly was employed by the Carrier as a track foreman at the time of this claim.

On May 10, 2000, the Organization filed a claim on behalf of the Claimant, who issued a letter of protest objecting to the Carrier's selection of a Mr. David Acampora for a Network Instructor's position on the New England Division. The Claimant's opinion is that the position in question should have been awarded to the most senior qualified employee, which the Claimant argues he is considering his twenty-six years of seniority and work experience and extensive safety training. The Claimant contends that the Carrier's selection of Mr. Acampora is not justified as Acampora has less work experience and seniority. The Organization argues that the Carrier did not review the Claimant's resume in a fair and impartial manner and showed favoritism in awarding the position to Mr. Acampora. The Organization contends that the Carrier violated Rule 2(b)

of the parties' agreement when it did not test the Claimant and Mr. Acampora in the same manner for the position in question. The Organization points out that the Mr. Acampora has neither met the educational requirements nor, and most importantly, earned the work experience requirements and service time required for Network Instructors. The Organization claims that there is some underlying reason as to why Mr. Acampora was awarded the position considering the Claimant's qualifications. The Organization argues that the Carrier be required to award the Network Instructor position to the Claimant and that arrangements be made for the Claimant to receive all of the training that Mr. Acampora received in order that he be able to replace Mr. Acampora immediately.

The Carrier denied the claim, arguing that the Claimant's argument does not warrant enough merit to overturn the selection of Mr. David Acampora to the position of Network Instructor on the New England Division. The Carrier maintains that the position is for that of an instructor with the necessary skills to deliver training to employees in a knowledgeable and professional manner, and Mr. Acampora met those requirements and was considered to be the most qualified candidate for the position. The Carrier further points out that Network Instructor positions do not require that they be filled pursuant to Rule 2(b). The Carrier argues that it has the right to appoint the most qualified applicant for the position in question. In addition, the Carrier maintains that during the negotiation of the parties' agreement, the Carrier and Organization both agreed that it was in the best interest of the Carrier and the Organization to select candidates with the best teaching skills in order to effectively provide vital training to Carrier employees. The Carrier

argues that all of the applicants were evaluated on the same criteria and provided the same opportunities to demonstrate their teaching skills, and Mr. Acampora demonstrated superior teaching skills, which are the most vital aspect of providing training and instruction. The Carrier claims that it selected Mr. Acampora based on his significant employment experience, primarily outside the railroad industry, in the operation of numerous types of equipment and machinery, and his involvement in safety efforts. The Carrier points out that the Claimant received favorable ratings, whereas Mr. Acampora received excellent ratings.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Claimant's rights were violated when he was not selected for the Network Instructor's position. The record reveals that the Carrier posted the job opportunity notice on January 13, 2000. Subsequent to that posting, on March 15, 2000, an agreement was reached with the Organization regarding the selection and use of Organization employees for the Network Instructor positions. Interviews were conducted with the various candidates and Mr. Acampora was selected because the Carrier determined that he was the most qualified applicant. The Organization then filed its grievance on May 10, 2000.

The March 15, 2000, agreement covering the selection and use of Organization employees as Network Instructors makes it clear that the Carrier has the right to select the most qualified candidate. The grievance language states the following:

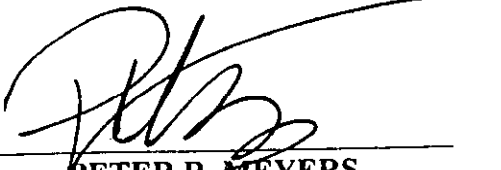
Should a BMW applicant not be selected and such applicant or the BMW believes such candidate to be equally or more qualified than a junior-selected candidate, they may file a protest with the Senior Director - Engineering Employee Services.

Hence, the language of the agreement makes it clear that the decision will be based upon qualifications and that the Carrier has the right to select a junior employee if that employee is more qualified than a senior employee. The Carrier has presented sufficient evidence that Mr. Acampora was selected based on his significant employment experience, much of it from outside the railroad industry, in the operation of equipment used in railroad operations, as well as his involvement in safety efforts and safety training. Mr. Acampora received higher ratings in both the interview and practical demonstration. Organization members were involved in the interview phase. This Board finds that the Carrier, by selecting Mr. Acampora, did not act unreasonably, arbitrarily, or capriciously. The record reveals that the panel found that Mr. Acampora had better training skills than the Claimant.

Since there is insufficient evidence to refute the determination by the Carrier that Mr. Acampora had greater training skills than those demonstrated by the Claimant, this Board cannot find that there was any violation of the agreement. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**

DATED: April 16, 2002

  
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**CARRIER MEMBER**

DATED: April 16, 2002