

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION *
(AMTRAK) *
*
- and - *
*
BROTHERHOOD OF MAINTENANCE OF WAY *
EMPLOYEES *
*

CASE NO. 72

AWARD NO. 72

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation or Amtrak (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"(a) Claim of M.J. Dunn that Junior Employees were awarded Mason and Carpenters positions, advertisement No. 350.45 dated September 26, 1980.

(b) Claimant Dunn now be given mechanic seniority, in the first order of preference shown on his bidsheet, that was given to the first Employee Junior to Claimant Dunn.

(c) The Claimant now be compensated for all wage loss suffered on account of awarding the Mechanics position to a Junior Employee."

Background Facts

On September 26, 1980 the Claimant, who was a Carpenter Helper at Sunnyside Yard, New York, completed a bid sheet in accordance with Bulletin No. 350.45. The Claimant bid on thirteen (13) vacancies, seeking mason, carpenter, ironworker, and painter positions. On October 3, 1980 a Notice of Award was issued, and the Claimant received his twelfth choice, a Painter's position.

Eight (8) employees, junior to the Claimant, were awarded mechanics positions (mason and carpenter positions) for which the Claimant had bid in higher preference to the Painter's position which he received.

The Claimant complained to the Organization regarding junior employees receiving preferential awards, and on October 16, 1980 the Organization brought the matter to the Carrier's attention.

The Carrier responded on February 5, 1981 and advised that if the Claimant considered himself qualified for a position other than the one he held that he could request an examination in the craft from his supervisor.

By letter dated May 14, 1981 the Organization advised the Carrier of which employees junior to the Claimant had been awarded positions as carpenters and masons and stated that an investigation revealed that no other applicant had been given or was required to be tested prior to the mason and carpenter positions being awarded.

The Carrier rejected the Organization's arguments and the matter was progressed to this Board.

While the matter was pending before this Board other elements of the claim were addressed by the Third Division of the National Railroad Adjustment Board, Paul C. Carter, Referee, in Award No. 25268. The Third Division dismissed certain parts of the claim. Referee Carter observed that the Carrier had granted certain remedy portions of the claim, specifically the Claimant had been restored to the B & B Seniority Roster and was returned to service with seniority and all other rights unimpaired, because he had been improperly terminated from service on June 24, 1982 because his name had been omitted from the 1982 B & B Seniority Roster.

The parties stipulated that the only question before this Board is whether the Claimant is entitled to be placed on either the Masons' or Carpenters' Seniority Roster.

Positions of the Parties

The Organization points out that the Claimant entered the Carrier's service on July 15, 1976 and that he was senior to a number of employees who were awarded mechanics positions that he had bid upon.

The Organization points out that Rule 1 of the applicable agreement provides that in the assignment of employees to positions, "qualifications being sufficient, seniority shall govern".

The Organization further points out that none of the junior applicants for the disputed positions possessed seniority on the Carpenters' Roster as a mechanic; while the Claimant had established seniority on the Carpenters' Roster as a Carpenter Helper as of September 15, 1976. The Organization contends that the Carrier failed to recognize the Claimant's Carpenter Roster seniority when it awarded carpenter positions to junior employees; and the Carrier further failed to credit the Claimant's seniority when it awarded mason positions to employees junior to the Claimant in terms of their respective dates of hire.

The Organization cites a decision of the Third Division of the National Railroad Adjustment Board, which it submits establishes that the Carrier improperly failed to consider the Claimant's seniority.

The Organization further submits that the Claimant was singled out when the Carrier determined that he would have to give a practical demonstration of his qualifications, while employees junior to him were not subject to the same requirement.

The Organization requests that the claim be sustained and that the Claimant receive appropriate placement on the seniority roster.

The Carrier contends that the Claimant was simply not qualified to be awarded a mason or carpenter position. The Carrier submits that the Claimant failed to present any evidence that he was so qualified, and that he failed to respond to the Carrier's repeated

offer to provide him with an opportunity to prove his qualifications.

The Carrier cites awards from the Third Division of the National Railroad Adjustment Board, which it alleges establish the Carrier's right to determine qualifications in cases of this type.

The Carrier submits that the Claimant could have resolved any question as to his skill in either the mason or carpenter classification by availing himself of his contractual right under Rule 2, Qualifications for Positions. The Carrier contends that it was neither arbitrary nor capricious in its determination regarding the Claimant's perceived lack of qualifications.

The Carrier also points out that Rule 10, Seniority, requires that an employee who enters service in a class above that of Trackman will acquire seniority in that class from the date assigned to an advertised position.

In conclusion, the Carrier contends that it has complied with the agreement and properly exercised its managerial prerogative in determining qualifications. Therefore, the Carrier requests that the claim be denied.

Findings of the Board

The record in this case is not crystal clear. Many relevant facts regarding the Claimant's qualifications vis a vis the qualifications of the junior employees, who were awarded mason and carpenter positions, are not in the record before us.

In spite of the absence of those facts, we, nevertheless, find no reason to challenge the Carrier's right to require employees to prove their qualifications for a position in a higher class through a practical demonstration or test of their skills.

Therefore, we have no reason to conclude that the Carrier acted inappropriately when it placed such a requirement upon the Claimant. We would also note that the Carrier afforded the Claimant several opportunities to demonstrate that he possessed the requisite skills and qualifications for the positions he bid upon.

However, the Organization raised the question of whether employees junior to the Claimant were required to prove their qualifications and skills to the same extent as was the Claimant. In fact, the correspondence attached to the submissions raises a reasonable inference that the junior employees were not put to the same test. However, since we do not have the ability, in the absence of record evidence, to determine whether those junior employees possessed greater skills and experience in mechanics' positions than did the Claimant, as a result for example of their outside employment experience, we cannot determine with certainty that the Carrier was or was not justified in awarding the junior employees the positions while denying the Claimant's bids contingent upon his successfully demonstrating his practical skills as either a carpenter or a mason.


At this time, it would be inappropriate to burden the Organization with the obligation to demonstrate that the junior


employees were given preferential treatment, since this Board cannot divine how the Organization would acquire the information regarding the relative skills and experience that the junior employees possessed in 1980.


In view of this difficulty, we find that it would be equitable at this time to grant seniority to the Claimant on a Mechanic's Seniority Roster, and to afford him the opportunity within ten (10) days of the receipt of this Award to select whether he wishes to be placed on the Masons' or the Carpenters' Seniority Roster as a mechanic.

Therefore, we will sustain the claim, without precedent, in accordance with the above findings.

Award: The claim is sustained in accordance with the above findings. This Award was signed this 26th day of February, 1988 in Bryn Mawr, Pennsylvania.


W.E. LaRue, Organization Member


L.C. Hriczak, Carrier Member


Richard R. Kasher, Chairman and Neutral Member