PUBLIC LAW BOARD NO. 2752

AWARD NO. 4

CASE NO. 4

FILE NO. CL-79-26 PTRA

PARTIES TO DISPUTE:

Port Terminal Railroad Association

and

Brotherhood of Railway, Airline and Steamship Clerks

STATEMENT OF CLAIM

"(1) The Association violated the Rules of the current Agreement between the parties including but not limited to Item 4 of Addendum No. 1 (Extra Board Agreement), when on June 27, 1979, it refused to allow Mr. T. J. Stanford to work the overtime vacancy on PICL Job No. 257 as the senior regular available employe at Houston, Texas.

(2) The Association shall compensate Mr. Stanford for eight (8) hours' pay of PICL Job No. 257 for June 27, 1979."

OPINION OF BOARD

On June 27, 1979, the Carrier failed to fill a vacancy by selection of the Claimant, even though he was senior to the employee designated.

The sole basis for the Carrier's refusal to designate the Claimant was based upon the fact that the Carrier's insurance company refused to extend liability coverage to Carrier when the Claimant was driving a Company vehicle, due to an asserted poor driving record.

A review of the record clearly indicates that the sole issue in dispute between the parties in this case is whether or not the Carrier may refuse to designate an employee to a position when his seniority entitles him to that position

based upon the fact that he may be uninsurable.

It is urged by the Organization that the Claimant possessed a valid driver's license in the State of Texas, and that the Carrier could not require any additional qualification for driving a Company vehicle.

The Carrier states that it could not knowlingly permit the Claimant to drive without liability insurance coverage, and that the Employee had only himself to blame for his poor driving habits.

The Organization has cited a recent Award issued by the Third Division of the National Railroad Adjustment Board (23141).

In that case, the Carrier had evaluated an employee's ability and had made a judgment that due to limited eye sight he should not drive a vehicle. The Organization argues that the Claimant had a valid chauffeur's license, and thus he met the requirements for a driver's job. The Board noted that the employee possessed a valid driver's license, but held that there was nothing to demonstrate that if the Claimant was allowed to drive, there would be a threat to safety or health of fellow employees or the general public, and based on the record before the Third Division, it held that the Claimant therein was entitled to a certain promotion.

It should be noted, however, that the Organization before the Third Division contended that the Carrier had no authority to restrict the type of work that an employee can do without demonstrating that the restriction "is legitimate." Thus, we are not certain that the cited Third Division Award is necessarily controlling in this case.

At Page 6 of the Submission to this Board, the Claimant asserted that all the Carrier had to do was "...to produce documented correspondence from their Insurance Company to sustain its allegations, and this it did not do. In the absence of supporting documents, the Association's statements can only be considered self-serving and of no probative value..."

But, that concept was not expressed while the matter was under review between the parties on the property. The Carrier advised the Employee that he was excluded as a named driver from the Carrier's liability insurance. In response to his claim, he was again told that the insurance company would not allow the Carrier to permit him to drive because of his driving record.

At no time, during the early stages of the consideration of the claim did the Claimant ever request that the Carrier present it proof of the prior driving record, and under those circumstances, it is only reasonable to presume that the Carrier concluded that the Employee was aware of his own driving record, absent some request.

Disputes such as this must, of necessity, be determined upon their own merits, and obviously it would be inappropriate to allow an insurance carrier to whimsically affect the labor relations between two parties. But there is nothing of record to suggest that the insurance carrier was motivated by any malicious considerations. In fact, the record indicates that at a time subsequent to the date of the claim, the Employee was notified that his driving record had been corrected to the point that the insurance company once again extended coverage when the Employee drove a Company vehicle.

Based upon a review of the entire record, we are unable to find that the Carrier acted in an arbitrary or capricious manner in refusing to permit the Employee to drive a Company vehicle, and we feel that said restriction was a legitimate concern.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.

Joseph A. Sickles
Chairman and Neutral Member

T. Minahan
Carrier Member

C. S. Coleman
Organization Member

Nov 17, 1981
DATE