

PUBLIC LAW BOARD NO. 3530

Award No. 8
Case No. 8

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Mr. R.T. Redford, P.O. Box 134-E, Burkville, VA 23922, made application to Section Foreman position, however, position was awarded to another applicant who was a junior section laborer to claimant. Employees request that Mr. Redford be placed on seniority roster as Section Foreman ahead of D.A. Hurt, (junior employee making application to position.)

FINDINGS:

In early 1981, Claimant applied for the open position of Assistant Section Foreman. The position was awarded to one of Claimant's fellow workers, Mr. D.A. Hurt. Claimant felt he had been unjustly treated, in that he believed himself to be more qualified for the position than Hurt.

On May 5, 1981, the Organization requested a formal investigation to determine whether Claimant had been unjustly treated. The investigation was granted, but on the basis of the evidence adduced at the hearing Carrier determined that Claimant had not been unjustly treated and refused to change the decision awarding the Assistant Foreman position to Hurt.

On July 17, 1981, the Organization filed a claim requesting that Claimant be given Assistant Section Foreman's rights ahead of D.A. Hurt and that he be awarded the difference in pay, if any. The Claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Carrier violated the Agreement by failing to award the Assistant Section Foreman position to Claimant, and if so, what should the remedy be.

Rule 8(d) of the Agreement, which governs the bulletining and filling of positions, reads in pertinent part as follows:

In the event no applications are received from employees holding seniority in the Grade in the Class and Group in which a permanent or temporary position or vacancy is bulletined and there are no furloughed employees from that particular seniority Grade who have exhausted all seniority rights as provided for in Section (b) of Rule 16, Management shall have the right to select the persons whom in its own judgment it considers best qualified to fill such new positions or vacancies, except as provided in Rule 11.

Since Rule 11 is not applicable in this case, Rule 8(d) gave Carrier the right to choose the applicant whom management considered best qualified for the position of Assistant Section Foreman. Thus, absent a showing that Carrier's action was arbitrary, capricious, or an abuse of discretion, the decision to select Hurt for the position must be allowed to stand.

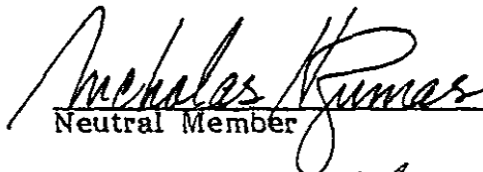
Roadmaster L.P. Porter made the decision to choose Hurt for the position rather than Claimant. At the investigation, Porter testified that he was familiar with the experience and work of both men. He testified further that Hurt had

a great deal of knowledge about general railroad maintenance, and that, at the time the position was vacant, Claimant did not have equivalent qualifications.

The burden is on the Organization to show that the decision to choose Hurt rather than Claimant was made in an arbitrary or capricious manner. However, the record shows that Roadmaster Porter made the decision based on the experience and knowledge of both men. While the Organization may disagree with his opinion as to which employee is better qualified, it has failed to show that his decision was made in such a way as to be an abuse of Carrier's managerial discretion. Under these circumstances, the Board can only hold that the Organization has failed to show a violation of Rule 8(d). Accordingly, the claim must be denied.

AWARD:

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 4/27/84