

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 14

Case No. 31

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-1585) that:

(a) The Carrier violated the current Scheduled Agreement, effective February 1, 1982, as amended, particularly Rule 3, when failing to award the position of B&B mechanic to Claimant J. C. Langley, furloughed trackman, as advertised by Bulletin 9-85, dated February 25, 1985.

(b) Claimant Langley shall be granted a seniority date as a B&B mechanic effective March 5, 1985, on the Columbus Division Seniority Roster and be compensated eight (8) hours each day, effective March 11, 1985, and continuing, as provided by Rule 26 (f) of the Scheduled Agreement.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This case arises from a claim that the Carrier violated the Schedule Rules by its failure to award a B&B Mechanic position in Gang 126, Charleston, West Virginia, to Claimant J. C. Langley,

a furloughed Trackman.

The record reflects that when the position in question was posted by Advertisement #9-85, dated February 25, 1985, the Claimant, who was on furlough from the Trackman classification, submitted a bid. Award No. 9-85, dated March 5, 1985, indicated that the position was not awarded to the Claimant and instead was noted "no qualified bidder". The position was reposted and subsequently awarded to a person with B&B Mechanic seniority on or about May 6, 1985.

The text of Advertisement #9-85 stated the following:

"QUALIFICATIONS:

* * *

Must be able to pass satisfactory examination.

DUTIES: ...Must be able to perform carpenter work, including laying out stairs, hanging doors, windows and construction of forms and all bridge work as assigned."

The position of the Organization is that the Carrier's actions in this matter violated the Schedule Agreement in that the Carrier did not offer the Claimant an opportunity to take the B&B Mechanic examination; that because the Carrier has previously awarded B&B Mechanic positions to Employees outside that classification without requiring them to take an examination, the Carrier should have followed that same procedure in respect to the Claimant; and that because the Carrier's actions were arbitrary and violative of the Claimant's rights, the Carrier should be required to grant the Claimant a B&B Mechanic seniority date effective

tive March 5, 1985 and compensate him, effective March 11, 1985 as provided by Rule 26 (f) of the applicable Agreement.

The Carrier's position is that the determination was made that the Claimant was not qualified to perform the duties of the B&B Mechanic position; that the Organization has made no showing that this determination was wrong by offering evidence that Claimant possessed the required qualifications for the position; and that since the Claimant made no request in writing to demonstrate his qualifications to perform the duties of the position, the Carrier's actions respecting the Claimant were not violative of the Agreement.

After due study of the foregoing, and of the whole record, the Board finds that there is no record showing of the Claimant's qualifications to perform the duties of the position in question, and that the Carrier was under no obligation to give him a test to determine whether he possessed the requisite duties. The Organization's statement that B&B Mechanic positions have been previously awarded to Employees outside of that classification, without requiring an examination of their B&B Mechanic qualifications, does not alter this finding. The parties' agreed text concerning "demonstration of 'qualifications'" is found in Rule 3, Section 2 of the Agreement.

"Section 2. Qualifications for positions.

In making application for an advertised position or vacancy, or in the exercise of seniority, an employee will be permitted, on written request, or may be requir-

ed, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

It appears that in awarding a B&B Mechanic position out of classification under this rule the Carrier's prerogatives are such that it may determine that an Employee is qualified to perform the duties of the position on the basis of the information contained in his employment file, or on the basis of the employment file information plus the information resulting from an examination or a practical demonstration of the Employee's qualifications to perform such duties. The fact that some positions have apparently been previously awarded on the basis of the employment file only, does not obligate the Carrier to award the disputed job to the Claimant in this case without examination. Also, these prior awards without examination do not change the Rule 3, Section 2 text concerning an examination or a demonstration of qualifications. Such examination or demonstration may be required, as in this case as per the advertisement of the position, or it may occur because of an Employee's written request under the rule.

However, in the event that the Carrier determines that an applicant out of the B&B Mechanic classification lacks the requisite qualifications for the posted B&B Mechanic position, there is no obligation on the Carrier to examine the applicant anyway. For this event, the rule requires the Carrier upon written request by the Employee, to permit the Employee to demonstrate his qualifications; in this case no request for a demonstration of qualifica-

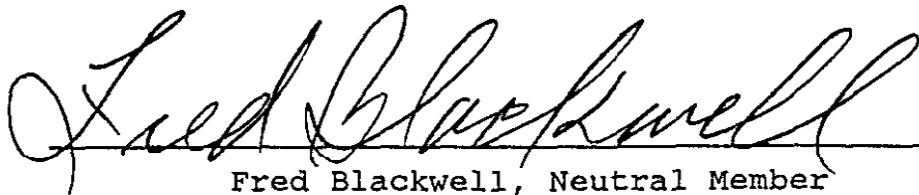
tions was made and in consequence, there is no basis for finding that the Carrier deprived the Claimant of opportunity to demonstrate his qualifications for the disputed position.

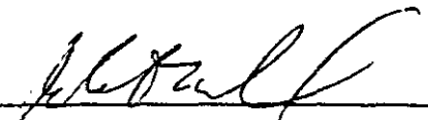
In view of the foregoing, and for the reasons indicated, the Board finds that the Carrier's initial determination that the Claimant was not qualified to perform the duties of the position in question, is not shown to be unreasonable, arbitrary, or violative of the applicable Agreement; and that there is no basis of record for determining that the Claimant, a furloughed Trackman, was qualified to perform the duties of the B&B Mechanic position. Accordingly, and in line with prior Third Division Awards No. 14040, No. 6028, No. 6178, and Fourth Division Award No. 3960, the claim will be denied.


AWARD:

Claim denied.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.


Fred Blackwell, Neutral Member


R. O'Neill, Carrier Member


W. E. LaRue, Labor Member

Executed on 5-28, 1986.