

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 2

Case No. 2

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-352) that:

(a) The Carrier violated the Rules Agreement effective February 1, 1982, particularly Rule 4, Section 2, when it prohibited Claimant Russell Irwin to displace junior employees in the exercise of his contractual right on December 20, 1982.

(b) Claimant Irwin's record be corrected to reflect that displacement was allowed as of December 20, 1982.

(c) Claimant Irwin be reimbursed any loss of wages as a result of the Carrier's failure to allow him to displace said junior employees on December 20, 1982.

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 dispute arises from the Claimant's protest of the Carrier's action in December 1982, whereby the Claimant was not permitted to displace any one of three junior Employees on the

ground that he was not qualified for the positions involved in his displacement request.

The Claimant has a Trackman's seniority date of November 7, 1984, and a Foreman's seniority date of January 12, 1977.

After being placed on furlough status on December 17, 1982, as a result of the abolishment of his position on that date, the Claimant gave notice on December 20, 1982 of his desire to displace to any one of three positions held by Employees who were junior to him on the seniority roster. The Carrier refused to permit the displacements on the grounds that the Claimant did not possess the qualifications required to perform the duties of the positions, whereupon, under date of February 4, 1983, the Claimant filed three separate claims which have been presented to this Board in Cases Nos. 2, 3, and 4.

This dispute involves Case No. 2, relating to Mr. Frank Fisherauer, who, at the time of the attempted displacement, held the position of Track Foreman/Switch Inspector on the Selkirk Subdivision. Cases Nos. 3 and 4, respectively relating to Mr. Al Amburg, Assistant Track Foreman, and Mr. Vincent Ferrero, Boom Truck Operator are considered in subsequent Awards Nos. 3 and 4.

In regard to the Carrier action concerning the position of Track Foreman/Switch Inspector, held by Mr. Fisherauer, the record reflects that the Carrier disallowed the Claimant's displacement to this position because the incumbent of the position is required to be qualified on the Federal Railroad Administration

Track Inspection Rules and possess a F.R.A. qualification card, which qualifications the Claimant did not possess. The Carrier submits that these circumstances establish that the Claimant was not qualified for the position of Track Foreman/Switch Inspector, and that the record affords no basis for disturbing the Carrier decision in this regard.

Although the Organization makes no challenge that the qualifying conditions applied to the position in question by the Carrier are unreasonable or arbitrary, the Organization contends that the Carrier controls who gets tested for the F.R.A. qualification card and that the Carrier failed to allow the Claimant to show that he had sufficient knowledge to become qualified.

After due study of the foregoing and the whole record, inclusive of the parties' arguments in support of their respective positions in the case, the Board concludes that the objections to the Carrier's refusal to permit the Claimant to displace to the position of Track Foreman/Switch Inspector are not supported by the record. In the exercise of its managerial prerogative to assess the Claimant's qualifications for the position in question, the Carrier made a determination that he lacked the requisite qualifications; and the record evidence makes no showing that the Carrier's determination in this regard was arbitrary, capricious, or discriminatory. Third Division Awards Nos. 4040 and 14736. Moreover, the Board finds significance in the fact that the record provides no indication that the Claimant took any action to

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exercise his rights under Rule 3, Section 2 (Qualifications for Positions) which provides that:

"...in the exercise of seniority, an Employee will be permitted, on written request, or may be required, to give a reasonable, practical demonstration of his qualifications to perform the duties of the position."

Accordingly, on the whole record, the Board finds no violation of the Agreement by the Carrier's action in this dispute and thus no basis for disturbing such action.


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 Feb 12, 1986.