

PUBLIC LAW BOARD NO. 5567

AWARD NO. 7
NMB CASE NO. 7
UNION CASE NO. N.A.
COMPANY CASE NO. 890490 MPR

PARTIES TO THE DISPUTE:

Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

- and -

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned junior employe C. L. Woodward instead of senior employe L. B. Hamilton to the bridge tender position at Morley Bridge advertised on Bulletin No. NOA00057 (Carrier's file 890490 MPR.)
2. As a consequence of the aforementioned violation, Mr. L. B. Hamilton shall be allowed a bridge tender seniority date immediately ahead of Mr. C. L. Woodward and he shall be afforded the right to work the bridge tender position at Morley Bridge in accordance with that seniority."

OPINION OF BOARD:

In this case, Mr. L. B. Hamilton (Claimant) grieved an alleged violation of his seniority rights under Rules 1, 2 and 10, when Carrier passed him over in favor of a junior bidder for the vacant position of Bridge Tender on the Morley Bridge on the New Orleans "A" seniority district. It is not disputed that Claimant entered service of Carrier July 12, 1960, that during twenty one years of service he had an "unblemished" employment record and that he established seniority in the New Orleans "A" seniority district, where he worked as a Track Foreman at the time the bid was posted and filled in June 1989.

Claimant was the senior in length of service of the three (3) bidders for the Morley Bridge Tender vacancy, but Carrier selected Mr. C. L. Woodward, a B&B Mechanic who was junior to Mr. Hamilton in length of service.

By letter of July 20, 1989, the BMW General Chairman filed this claim on behalf of Mr. Hamilton, pointing out that Carrier had awarded the bid to the junior employee who "held no New Orleans "A" rights." In denying the claim on July 28, 1989, the Superintendent did not dispute the relative seniority of the applicants, but did dispute the relative ability, as follows:

The basic agreement is absent any language which precludes management from determining the principal duties and responsibilities of a position, and more applicable to this case, ensuring that such prescribed duties and responsibilities are performed in a safe and efficient manner by competent and able individuals. As a result, Carrier's management is at liberty to disqualify an individual such as Mr. Hamilton. As an employee of the B&B department, Mr. Woodward has worked on and around bridges. Mr. Hamilton as a track foreman does not possess the same ability in my opinion.

The positions of the Parties remained unresolved in handling through the grievance machinery until

appeal to this Board for final and binding determination.

Careful examination of the undisputed facts, the plain language of the Rules and authoritative precedent all lead this Board to sustain the claim. Rule 1 (a) defines seniority as length of service with Carrier. Carrier erred additionally in selecting Mr. Woodward because he allegedly was "more qualified" than Claimant. Rule 10 is not a "relative ability" hybrid seniority provision but rather a "sufficient ability" provision. It is well settled under NRAB precedent that the senior bidder under such language need not show greater or even equivalent ability to the junior applicant. Rather, seniority must govern provided only that the senior bidder possesses "sufficient" or "adequate" ability and merit. See Awards 3-2638; 3-5857; 3-8181; 3-11279 and 3-14762.

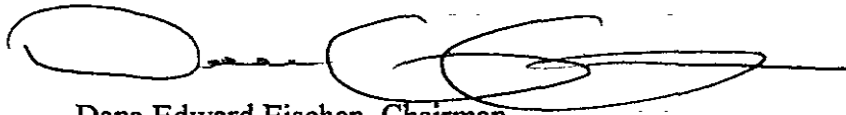
Nothing in this record suggests that the position of Bridge Tender requires any special qualifications, training, experience, ability or merit beyond that which Claimant possessed as a Track Foreman with an unblemished twenty one-year work record with this Carrier. The fact that no specific training, experience, expertise, ability or merit is required to perform Bridge Tender duty is reinforced by the language of Rule 1(e) of the Agreement between the Parties. Based upon all of the foregoing, therefore, this claim must be sustained.

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AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this decision within thirty (30) days of its execution by a majority of this Board.



Dana Edward Eischen, Chairman

Dated at Ithaca, New York on April 8, 1995

Ray C. Bohannon
Union Member

Dated at Chicago, IL
on April 25, 1995

W.G. YR
Company Member

Dated at OMAHA, NEBRASKA
on April 24, 1995