

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 29
)
) Award No. 27
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: November 7, 2001

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier advertised a Group 19 Class A System Concrete Tie Gang Foreman position on Bulletin NSF02411, dated March 6, 1997 and instead of assigning one of the eight (8) employees who submitted a bid for the position, the Carrier assigned Foreman J. P. Beach, who did not bid for the position, to fill said position (System File N-420/1069504).
2. The Agreement was violated when the Carrier advertised a Group 19 Class A System Pick Up Foreman position on Bulletin NSF02407, dated March 6, 1997 and assigned junior Foreman T. D. Chee to the position instead of senior Foreman J. P. Beach who had submitted a bid for the foreman's position (System File N-421/1069505).
3. As a consequence of the violation referred to in Part (1) above, either Claimant M. H. Hill, C. W. Dannelly, V. E. Helm, R. S. Patterson or P. F. Sanchez shall be assigned to the position, the bulletin corrected to show the proper assignment, the assignee shall be compensated for any wage loss suffered as a result of the improper assignment, he shall also be compensated for away from home expenses incurred as a result of the improper assignment and Claimant J. P. Beach shall be released from the Concrete Tie Gang foreman position, he shall be allowed to return to his foreman position or to a position to which he bid and he shall be compensated for all wage loss suffered and expense incurred as a result of the improper assignment.
4. As a consequence of the violation referred to in Part (2) above, Foreman J. P.

Beach shall be assigned to the System Pick Up foreman position advertised as NSF02407, the bulletin shall be corrected to show the proper assignment and he shall be compensated for any wage loss suffered and expense incurred as a result of the improper assignment.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The instant case involves the assignment of foremen to Class 19 Group A positions. By Bulletin NSF02411, issued on March 6, 1997, Carrier advertized two System Rail Concrete Tie Foreman positions. Eight employees applied, five of whom had seniority in the group and class. Of those five, two had worked previously as System Rail and Concrete Tie Gang Foremen and were qualified, but they received their first choice of assignments. The remaining three did not have prior experience as System Rail and Concrete Tie Gang Foremen. Consequently, Carrier recalled Claimant Beach, who was working as an assistant foreman, for the position.

By Bulletin NSF2407, issued March 6, 1997, Carrier advertised the position of System Pick Up Foreman on Gang 9095. Claimant Beach and one other employee who had seniority in the group and class applied. Claimant Beach was the senior bidder but had not worked previously as a System Pick Up Foreman. Consequently, Carrier awarded the position to the junior bidder who had previous experience as a System Pick Up Foreman.

The Organization contends that although Carrier has the right to select foremen and assistant foremen for system gangs, once Carrier selects them, Rules 19 and 20(d) require Carrier to assign them by seniority. Carrier maintains that Rules 19(f) and 20(l) give it the right to act as it did in the instant case.

Rule 20(d) provides:

Except as otherwise provided in this Agreement, the senior applicant retaining seniority in the applicable class will be assigned to bulletined positions. If no qualifications for the position have been previously established, the employee assigned will be given full cooperation and assistance of supervisors and others in their efforts to qualify. Employees who are disqualified within the first thirty (30) working days, shall vacate the position on which disqualified and return to their former position provided it has not been acquired by a senior employee or abolished, in which event the disqualified employee may exercise seniority pursuant to Rule 21.

Rule 20(l) provides:

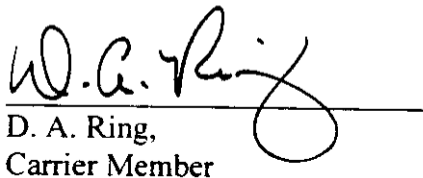
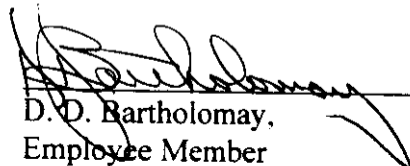
Management shall retain the right to select employees for service in Classes (a) and (b) of Group 19, and employees so selected shall establish a seniority date in Class (a) or (b) of the group. In the recall of system gang foremen when gangs are established, the senior system gang foreman with maximum experience and specialization in the type of work involved may be recalled for such service even though senior foremen with experience on other gangs remain off in force reduction. In the event senior foremen are off in force reduction they shall be concurrently recalled as system extra gang foremen.

On its face, Rule 20(l) appears to allow Carrier to bypass a senior foreman in Classes (a) and (b) of Group 19 who does not have experience and specialization in the type of work involved for a junior foreman who has such experience and specialization when establishing new gangs. Carrier contends that its long standing practice has been to award the position to the senior foreman who has such experience and specialization and who bid on the position, but if no qualified bidders are available, to recall a junior foreman who has the requisite experience and specialization.

The language of Rule 20(l) supports Carrier's interpretation and practice. Moreover, during handling on the property, Carrier maintained that this was its long standing practice and produced bid sheets documenting the practice. The Organization did not dispute Carrier's evidence. To the extent that there is any ambiguity, the ambiguity is resolved by the undisputed past practice. Accordingly, we find that the Organization has not met its burden to establish a violation of the Agreement.

AWARD

Claim denied.


Martin H. Malin, Chairman
D. A. Ring,
Carrier Member
D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, March 20, 2002.