

Public Law Board 7163

PLB No. 7163
Award No. 236

Parties to Dispute:

Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

And

CSX Transportation, Inc.

Statement of Claim: *"Claim of the System Committee of the Brotherhood that:*

- 1. The Carrier violated the Agreement when it refused to allow Mr. H. Pipkin, Jr. to displace junior employee J. Rogers as a structural welder on Team 6M74 commencing August 5, 2013 and continuing (System File B11168613/2013-150301 CSX).*
- 2. As a consequence of the violation referred to in Part 1, above Claimant H. Pipkin, Jr. must now be compensated for all compensation plus expenses beginning August 5, 2013 and continuing."*

Findings:

The Carrier or Carriers and the Employee or Employees involved in this dispute are, respectively, Carrier or Employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved, herein.

The Organization registered a claim alleging that although Claimant Mr. H. Pipkin, Jr. held superior seniority to employee Mr. J. Rogers, on August 5, 2013, he was denied his contractual right of displacement onto a structural welder position – then, held by junior employee, Mr. J. Rogers on Team 6M74 at Mile Post 000487. In support of its claim, the Organization cited to **RULE 1 – SENIORITY CLASSES; RULE 3 – SELECTION OF POSITIONS; and RULE 4 – SENIORITY.**

Rule 1 establishes the hierarchy of job classifications in the welding department; Rule 3 emphasizes the primacy of seniority, but clarifies the conditions under which seniority shall govern, and makes it clear that seniority, as applied under this rule, means seniority in the class in which the assignment is made; and Rule 4 establishes the manner in which seniority is accrued and exercised.

The Carrier conceded the primacy of seniority argument but maintained that seniority is controlling only where the job skills of competing employees are comparable. Carrier argued that "certification" was an indispensable requisite for success on the Structural Welding job to which Mr. H. Pipkin aspired, and that requisite was not among those listed in personal records. The parties agreed to allow the Claimant to displace on the job in question – contingent upon his enrollment in a formal training program in structural welding, and a demonstration of sufficient knowledge and ability – via an examination – to successfully perform the work.

After having been provided the requisite training, and the opportunity to become qualified and certified to function in that position, Claimant failed the examination and was, subsequently, disqualified from the structural welding position on Team 6M74.



As mentioned in a prior award (number 235) on this PLB, the Board emphasized the primacy of seniority if the skills and abilities of competing employees are comparable. However, the Carrier is not compelled to assign an employee to a position – superior seniority, aside – where the skills, knowledge, and abilities of the junior employee are demonstrably, significantly, and measurably superior to those of the employee with more seniority.

In the case before us, Mr. H. Pipkins, Jr. – although, the senior employee – had not acquired the certification that would enable success on the position he sought. After having been granted an opportunity for formal training that would facilitate his success, he did not demonstrate adequate knowledge and ability to function in that position.


The Organization did not adduce evidence sufficient to reach the threshold required to overcome its burden of proof.

Award:

Claim is denied.


J. E. (Jim) Nash, Arbitrator, Inc.
Chairman and Neutral Member
Katrina Donovan
CSX Transportation, Inc.

Carrier Member


Andrew M. Mulford
BMWE

Organization Member

Dated this 23 day of December 2017