

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 197

Award No. 197

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

-and-

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier awarded 'B' Foreman position No. 7008-7 to Mr. C. W. Roberts, failed to allow him the opportunity to qualify for said position and instead disqualified him and assigned a junior employee to the position.

(2) As a consequence of the violation referred to in Part (1) above, Mr. C. W. Roberts shall be made whole for all wages, benefits and credits lost beginning March 18, 1996 and continuing until the violation ceases.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

In 1996, the Carrier posted Mohawk Hudson Bulletin No. 322 advertising several positions, including "B" Foreman position 7008-7 headquartered at Fonda, New York. The Claimant was awarded this position. However, when he reported for duty on March 18, 1996, he was not allowed to work since he was not qualified on the NORAC Book of Rules. Bulletin No. 322 stated that applicants must be able to pass the Book of Rules examination. The Claimant took and passed the Book of Rules examination on April 8, 1996.

On April 29, 1996, the Organization filed a claim on behalf of the Claimant for the wages he lost when he was disqualified from the "B" Foreman position on March 18, 1996. According to the Organization, after the Claimant failed the Book of Rules examination on April 18, 1995, he made at least seven (7) attempts to schedule another examination to no avail. The Organization maintains that had the Claimant been retested during the 1995 production season he would not have been disqualified from the "B" Foreman position on March 18, 1996.

Conrail denied the claim contending, among other things, that the Organization failed to furnish anything to support its contention that the Claimant made repeated requests to take the NORAC Book of Rules exam after he failed it on April 18, 1995.

If the Claimant made numerous attempts to take the Book of Rules exam in 1995 as the Organization alleges then his disqualification on March 18, 1996, would be patently unfair. However, there is no evidence in the record to support this assertion. The Carrier objected to this contention when the claim was denied on March 6, 1997, and the Organization never submitted any evidence to support its position.

It is instructive to note that after the Claimant failed the NORAC exam on April 18, 1995, six Book of Rules classes were scheduled during the 1995 production season that the Claimant worked. There is no evidence that he made any attempt to attend any of these classes. The Carrier was not required to schedule a special rules examination for the Claimant.

This Board agrees with the Carrier that Award No. 67 of Public Law Board No. 3781 is factually distinguishable from the instant claim. The employee in that case drove from Erie, Pennsylvania to Cleveland, Ohio on two occasions to take the Book of Rules examination but he was not tested either time. Moreover, that employee had to wait eight (8) months before he finally became qualified on the Book of Rules. The dispute before this Board is clearly distinguishable from Award No. 67 of Public Law Board No. 3781. As observed above, there is no evidence that the Claimant made any attempt to take the Book of Rules examination while he was working during the 1995 production season. Additionally, after the Claimant was disqualified from the "B" Foreman position it was only three weeks before he took and passed the Book of Rules examination.

For all the foregoing reasons, the claim must be denied since the Carrier had the right to disqualify the Claimant from the "B" foreman position when it became aware that he was not qualified on the NORAC Book of Rules, which was a requirement of the position as stated in Mohawk Hudson Bulletin No. 322.

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AWARD: Claim denied.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Roy C. Robinson
Roy C. Robinson, Employee Member

Dennis L. Kerby
Dennis L. Kerby, Carrier Member

Dated: 4/30/02