

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 142
Case No. 225

PARTIES St. Louis Southwestern Railway Company
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT "Claim of the System Committee that:
OF CLAIM

1. Carrier violated the effective Agreement when they assigned a junior employee to Assignment No. 11-N (D&B), dated November 22, 1976.
2. Claimant J.A. Everette be now paid the difference between the rate of pay he is now receiving and the rate of pay of Water Service Repairman, beginning December 6, 1976 and continuing until such time he is allowed the position of Water Service Repairman. Also that he be given a water service seniority date of December 6, 1976."

FINDINGS

Upon the whole record, after hearing, the Board finds the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein, with a seniority date of 8/16/72, had been working for some time as a Water Service Helper. The position of Water Service Repairman was advertised on August 2, 1976 and although Claimant bid on the job it was not considered that he was qualified and the bulletin was cancelled. Subsequently a Mr. Tidwell was hired as a Water Service Helper on August 6, 1976. On November 22, 1976 a bulletin was issued for the position of Water Service Repairman and Tidwell was assigned to the position. It is noted that Everette placed his bid for the position as well.

Petitioner argues that Carrier by assigning the junior employee to the position violated the Agreement, in particular Rules 2 and 5. Petitioner states that Carrier did not make any attempt to give Mr. Everette an opportunity to prove his ability in the position in question. It is also argued that Carrier selected the employee which it believed was the better of the two for the position which was totally improper under

the rules of the Agreement. Furthermore, it is argued that Carrier never stated in any of the correspondence on the property that Claimant was not qualified to fill the position in question.

Carrier takes the position that it has the right to make the determination of employees' qualifications, fitness and ability. In the particular circumstances involved in this dispute, Carrier argues, that Claimant was just not qualified and did not have the ability to perform the job.

Rule 5-1(a) of the Agreement provides as follows:

"BASIS OF PROMOTION. Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail, the Carrier to be the judge, subject to appeal."

The Rule in the applicable Agreement herein is consistent with a long established principle throughout the industry that Carrier has the right, generally, to determine the fitness and ability of an employee. It is also well established that when Carrier determines that an employee is not qualified for a particular position, the burden then shifts to the Claimant to overcome Carrier judgment of disqualification.

As this Board stated in Award No. 122, under the language of the Rule 5-1(a) Carrier is required to show that Claimant has insufficient ability to perform the work as measured by the Claimant's own ability and not by comparing his ability or experience with that of a junior employee. The record of this dispute indicates no facts whatever to support Carrier's contention that Claimant was not qualified. There was no indication whatsoever during the handling of this case on the property going to the question of Claimant's ability or lack of such ability. Under the circumstance, given the provision of the Rule in question and the fact that Carrier failed to meet its burden of showing that Claimant's ability was not sufficient to perform the functions of the job in question, the claim must be sustained.

AWARD

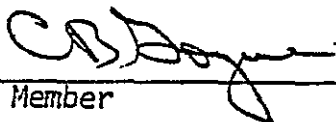
Claim sustained.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date thereof.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

October 19, 1979
Houston, Texas