

SPECIAL BOARD OF ADJUSTMENT #280

Award No. 150
Case No. 234

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. Carrier violated the Maintenance of Way Agreement expressly but not limited to Rule 2-Seniority - Rule 3-Reductions in Restoration of Forces - Rule 5-Promotions and Transfers when it assigned position of Welder-Helper on Welding Gang No. 7 under advertisement Bulletin No. 16-N to junior employee.
2. Welder-Helper Richard Davis be now assigned to Welding Gang No. 7 and be paid 1030 miles per week, plus eleven hours per week beginning September 19, 1978 and continuing for each week until he is assigned to Welding Gang No. 7."

FINDINGS

Upon the whole record, after hearing, the Board finds that 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 had a seniority date of May 9, 1977. As a result of an advertisement on September 19, 1978, Carrier assigned a Welder-Helper, Mr. Dean Miller, with a seniority date of April, 1978 to Welding Gang No. 7. Claimant had bid for that same position and clearly had more seniority than Mr. Miller.

Petitioner asserts that Carrier improperly assigned Mr. Miller to the position which Mr. Davis was entitled to. As a result, Mr. Davis' seniority rights were impaired and he was assigned to a less favorable location causing him to drive a substantial distance for some time. Petitioner suggests that it was clear that Claimant had sufficient ability to perform the work of Welder-Helper since some thirty days following the assignment in dispute, Carrier did indeed assign Claimant to the position of Welder-

Helper.

Carrier asserts that it has the sole right to determine the fitness and ability of an employee. Furthermore, Carrier states that it, as has been its policy, assigned the best experienced man to the job in question, in this case, Mr. Miller. Rule 5-1(a) reads 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."

In addition, a later section of the same rule provides for a thirty day trial period to determine ultimate ability to perform the position.

This Board has dealt with the identical dispute herein in Awards No. 122, 123, 124, 129, 130, 142 and 145. In this dispute, there is no distinguishable difference between the circumstances in the prior Awards as compared to that herein. There is no evidence whatever to indicate that Claimant did not have sufficient ability to perform the job of Welder-Helper.

This Board believes that Carrier would be well advised to recognize that it does not have the right to select the better applicants for a vacancy when both men have the basic ability to perform the position. If Carrier has doubt that the more senior of such applicants has the ability, the thirty day trial period provided for in the Agreement presents the opportunity to make the ultimate judgment. However, Carrier may not with impunity persist in assigning the better employee of two qualified men when the senior man has perhaps less experience in the particular work involved in the promotion.

In this dispute, then, based on the reasoning expressed above the claim must be sustained. However, the remedy requested is not justified by the record before this Board. Based on the facts presented in order to protect Mr. Davis appropriately in

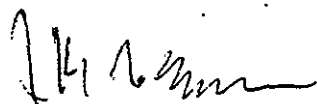
this sustaining Award, he will be placed on the seniority list with respect to Welder-Helper just ahead of Mr. D. Miller.

AWARD

Claim sustained to the extent indicated in the findings above.

ORDER

Carrier shall comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

May 20, 1980
Houston, Texas