

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 86
Case No. 86

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former Chesapeake and
Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier advertised a foreman position on Bulletin COCR-0054, dated April 25, 1996, and failed to award said position in compliance with the Agreement [System File C-TC-6350/12(96-1014) COS].
2. As a consequence of the aforesaid violation, Mr. J. Cupp, who submitted a bid for the foreman position, shall be assigned to the foreman position with a seniority date of May 13, 1996 and he shall be entitled to any loss incurred as a result of the lost work opportunity.

FINDINGS:

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

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 2, Seniority, provides, in pertinent part, that:

- (a) Establishment and Retention when going to other classes

or other Rosters.

1. Persons entering the service will not establish seniority until their application has been approved, they have passed physical examination, and have otherwise met the Railway Company's requirements for persons entering service. Rejection, if made, will be within sixty days after the person performs first service. When persons entering service have met the Railway Company's entrance requirements or have not been rejected within sixty days, their seniority will be established as of the day pay starts or started, except that in case of persons being employed for vacancies or new positions bulletined under Rule 18, seniority will not be established until awarded a bulletined position (either permanent or temporary), and seniority under such circumstances will date from date of bulletin awarding the position the same as is provided for employees already in service going to positions other than laborer under Section 4 of this rule.

. . . .

4. Employees already in service going to positions other than laborer will establish seniority in the new class or rank as of the date awarded a bulletined position (either permanent or temporary) in the new class.

(b) Service Rights.--Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railway Company as hereinafter provided.

Rule 13, Promotions, provides, in pertinent part, that:

(a) Except as provided by Section (b), promotion shall be based on ability and seniority. Ability being sufficient, seniority shall prevail, the management to be the judge.

(b) When it becomes necessary to promote employees to assistant foreman or foreman positions, consideration will be given to employees who have made application in writing to the Manager-Engineering or other corresponding officer for promotion to such positions. A promotion list in the ratio of two men to each supervisor's district will be set up and maintained on each Manager-Engineering's or other corresponding officer's territory. Placement on this list shall be based on judgment of the supervisory officers as to the ability to perform the work required. If a man is found unqualified after being placed on this list, he will be removed from the list and he will be notified in writing. In setting up the original promotion list, seniority shall be used to determine the position on list. Thereafter, men will be promoted, if qualified, according to position on the list, new men coming on the list taking a place at the bottom of the list. Local Chairman and General Chairman will be furnished a copy of the list and revisions. When a

vacancy or new position in the foreman or assistant foreman classes is not bid in by an employee already holding seniority in such classes, it will be awarded to the employee occupying first position on the promotion list if the employee standing first on the promotion list is qualified for the vacancy or new position.

Rule 18, Bulletining Vacancies or New Positions, provides, in pertinent part, that:

(a) Vacancies and new positions . . . will be bulletined within thirty days previous to or ten days following the date the vacancies occur or new positions are established, but temporary vacancies or positions need not be bulletined until the expiration of thirty days from the date such vacancies occur. If vacancies or new positions bulletined as temporary become permanent, they will be re-bulletined as permanent. Bulletins advertising positions will be posted at the headquarters of each gang or at places accessible to employees not in gangs.

Rule 19, Awarding Bulletined Positions, provides, in pertinent part, that:

(a) Positions bulletined in accordance with Rule 18 will be open for bids for a period of ten (10) days from date of bulletin. They will be awarded within thirty (30) days from date of the bulletin. New positions or vacancies may be filled temporarily pending bulletining and award.

The record indicates that the Carrier advertised a Force 5G86 floating Foreman position at Russell, Kentucky on April 23, 1996 after the previous incumbent of the position had become disqualified. The Carrier awarded the position to a qualified Foreman, who then canceled his bid. No furloughed Foremen submitted bids on the job. The Carrier therefore did not fill the position.

The Carrier subsequently denied the present claim on behalf of the Claimant, who had served as a Truck Driver and who had bid on the job. In denying the claim of the Claimant, the Carrier found that the Claimant did not possess any Foreman rights and lacked qualifications for the position. The Organization asserted that the Claimant was qualified for the position through seniority rights.

The record omits any rule that requires the Carrier to promote Trackmen to Foremen positions. The Carrier, however, may promote Trackmen to Foremen positions.

In the present circumstances, the Carrier retained the right to determine the qualifications of the Claimant for the referenced position. The record, however, omits any specific finding by the Carrier that the Claimant lacked such qualifications. The

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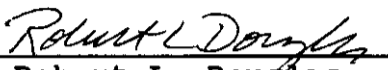
Organization asserted that the Claimant possessed the qualifications specified in the relevant bulletin, namely, a valid motor car card, FRA certification, and possession of a Certified Drivers License Class A. The Carrier failed to contest any of the representations by the Organization regarding the qualifications of the Claimant. The Carrier observed that the Claimant did not possess Foreman rights.

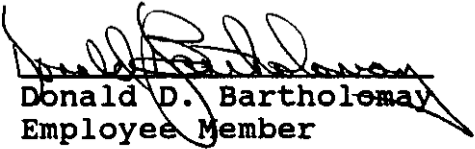
In the absence of any credible evidence in the record that the Claimant lacked the relevant qualifications, the Carrier acted improperly by failing to promote the Claimant without stating any reason other than the Claimant's failure to possess Foreman rights at the time.

With respect to a remedy, the record omits any evidence that the Claimant experienced a loss of earnings or that Force 5G86 actually performed any work during the relevant time. Under these precise circumstances, the Carrier shall award the Claimant a Foreman seniority date of May 13, 1996, however, no monetary award is warranted.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 5/14/01