

SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM:

Claim of the Committee that:

1. Carrier violated the effective Agreement by failing to promote trackman Leon Hudson to the position of Asst. Foreman on the Palestine Division, as was advertised for bids in Bulletin No. 16, dated November 15, 1973.
2. Carrier shall now assign Leon Hudson as Asst. Foreman, Palestine Division, with a seniority date of December 11, 1973, in that Class. And, that he be compensated for the difference in pay between the rate of Asst. Foreman and Trackman, beginning December 11, 1973, and continuing until he is so assigned in the higher class.

FINDINGS:

Disposition of this claim is governed by Rule 10(a) which reads as follows:

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

This rule vests in the management the responsibility for evaluation of the ability and merit of an applicant for promotion. The term subject to appeal is the employee's protection against arbitrary or unreasonable decisions thereon so, to prevail on appeal, a claimant must demonstrate that management exercised its responsibility unreasonably.

Whether such a judgment is reasonable or unreasonable must be determined from the facts and circumstances then existing. Later events cannot properly be considered in the evaluation of such a decision.

In this case the Employees assert that the claimant had sufficient ability because he passed the rules examination and worked for one

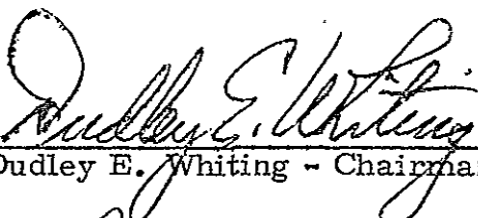
week in May 1973 relieving a foreman. The basic position of the Carrier is that the claimant had not demonstrated leadership capability and had frequent periods of absence from work.

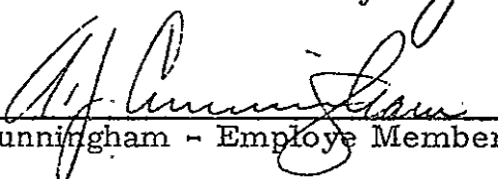
It cannot be denied that regularity of attendance is more critical to the positions of foreman or assistant foreman than to the position of trackman. However, regular attendance or lack thereof by a trackman is a proper element for consideration as to whether he merits a promotion to such other positions.

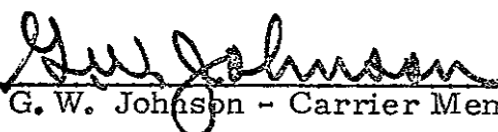
On this record it is not possible to find the management's decision that the claimant did not merit promotion to have been unreasonable, so the claim must be denied.

AWARD: Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 279


Dudley E. Whiting - Chairman


A. J. Cunningham - Employee Member


G. W. Johnson - Carrier Member

December 12, 1974

File: 247-5130