

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 267

Case No. 267

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (Former Missouri Pacific Railroad Company)

Statement of Claim:

(1) Carrier violated Agreement Rules 1(c), Rule 2, and Rule 10, when on March 22, 1985, the ATS-23 was bulletined as a new job, and on April 11, 1985, Mr. Robert McCoy was assigned to the ATS-23. Both Claimants Henry Carroll and M. E. Lain bid on the ATS-23 and were not considered for the position.

(2) Therefore the assignment of the ATS-23 shall now be reconsidered, and the senior operator who bid on this job should be assigned. Also, the senior applicant's seniority date as a Machine Operator should reflect the assignment date of Bulletin No. 14 dated April 11, 1985. This claim to continue until rectified.

Findings: This Board has jurisdiction by reason of the parties Agreement of January 5, 1959.

The Carrier, on March 22, 1985, advertised the following position on the Louisiana Division "one (1) Machine Operator-Permanent ATS-23."

There were four applicants therefor. Messrs. Carroll was working ATS-6; Savage the ATP-31; Lain the ATP-30, and McCoy the ATS-23 (at Little Rock Terminal). McCoy was awarded the position.

A grievance on behalf of Claimants Carroll and Lain were filed on the basis that they were both senior Machine Operators to the Carrier by McCoy and awarding McCoy the position had violated Rule 1(c) (Seniority) 2, 10 (Promotion). The claim was denied on the basis that Rule 10(a), reading:

"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."
(underscoring added)

Carrier has shown that the ATS-23, a Plassner Pum-16 Tamper, is a highly sophisticated track machine, which Machine Operator R. L. McCoy had been operating up to the

time of Bulletin No. 14 and that McCoy had previously been qualified thereon by the Plasser Factory Representative. Our Board in its Award 204 held:

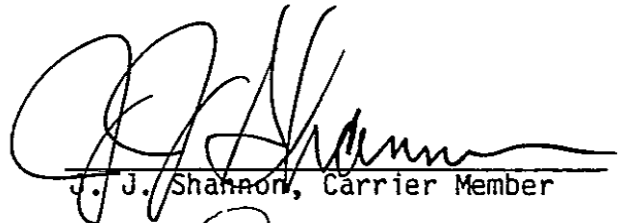
"Rule 10(a) provides for promotion on 'ability, merit and seniority and that management is the judge of ability and merit subject to appeal. We have held thereunder a claimant must show that the management acted arbitrarily or unreasonably and that is not shown by the mere fact that the Claimant that had greater seniority than the employee chosen.

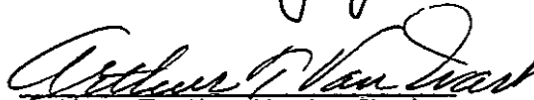
On the record of this case it has not been shown that management acted unreasonably."

Also, see, among others, Second Division Awards 6760, 10513, and Third Division 12669. The Employees had the burden to prove that the Claimants ability and merit were equal or greater than McCoy's. That burden was not met. Consequently, we too will deny this claim. However, such action should not deny the Claimants the opportunity to qualify on this machine at the next opportunity as previously offered.

Award: Claims denied.


Sol Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 6, 1989.