

SPECIAL BOARD OF ADJUSTMENT NO. 287

[illegible]

STATEMENT

OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement and ignored the seniority rights of Trackman James O. Whisner when it assigned the position of tie tamper operator as advertised in Bulletin No. 45, dated May 24, 1956, to an applicant who was junior to Trackman James O. Whisner.

(2) The Carrier likewise violated the very basic and fundamental concepts and principles of the seniority rules of the Agreement when it selected, instructed and required Trackman W. A. House, with seniority from April 3, 1947, instead of Trackman James O. Whisner, with seniority from March 9, 1926, to learn and become acquainted with operation of a tie tamper while under pay and serving as a Trackman at 'which time no employee on the division was qualified to operate this machine.'

(3) Claimant James O. Whisner be assigned to the position of tie tamper operator.

(4) Claimant James O. Whisner be paid the difference between what he received at the trackman's rate and what he should have received at the tie tamper operator's rate for each day he has been denied the right and opportunity to fill the position of tie tamper operator.

(5) Claimant be given seniority as a tie tamper operator as of June 15, 1956, the date position of tie tamper operator was awarded by Bulletin No. 49, and that he shall be considered senior in such class to Mr. Willard A. House."

FINDINGS: Carrier on May 24, 1956, bulletined a new job on the Cumberland Division as Tie Tamper Operator on McWilliams Machine PB-4-M. It awarded it to Willard House, whose trackman seniority date was April 3, 1947, thus by-passing applicant James O. Whisner, seniority date March 9, 1926.

This particular machine was placed in service on an experimental basis in 1955. Among those given training on the machine was House, who operated it 20 days in 1955 and 10 days in 1956. Carrier says he was a competent operator. Carrier says further that Claimant "had less than 30 minutes' experience" in operating the machine.

Carrier says Trackman House was 31 years of age. Claimant was 52 years of age. It states Claimant "was clearly not qualified to assume the responsibility of operating this machine."

Involved here is Rule 34:

"BASIS OF PROMOTION

A promotion is an advancement from a lower rank to a higher rank. Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient seniority shall prevail."

Being the senior Trackman, Claimant was certainly entitled to an opportunity to qualify on this job, at least equal to that afforded Trackman House. House had 30 days on the machine, Claimant only 30 minutes.

Seniority is certainly not the sole factor to be considered in promotion. However the Rule does provide that "ability and merit being sufficient, seniority shall prevail." Most certainly a man's age per se has nothing to do with it.

On the basis of this record we must and will hold that Carrier's action here was an arbitrary and capricious exercise of its basic right to determine the sufficiency of Claimant's ability and merit.

Carrier's rights in matters of this kind are fully protected by Rule 38. It should have given Claimant a qualifying period equal to Trackman House.

A W A R D

Parts (1) and (2) of this claim are sustained.

At the same time, we are not unmindful of the collateral doubts Carrier has respecting Claimant. In lieu, therefore, of parts (3), (4) and (5) of this claim, as made, we will award and direct as follows:

- (3) Claimant be assigned to the position of Tie Tamper Operator.
- (4) Rule 38 is fully applicable.
- (5) Should Claimant qualify within the 30 days, then Carrier shall pay him the difference between what he received at the trackman's rate and what he should have received at the tie tamper operator's rate for each day he has been denied the right and opportunity to fill the position of tie tamper operator, but in no event beyond February 25, 1960; and shall give to him seniority as a tie tamper as of June 15, 1956, the date position of tie tamper was awarded by Bulletin No. 49. He shall then be considered senior in such class to Mr. Willard A. House.
- (6) In the event Claimant should fail to thus qualify, his rights are protected by Rule 38, and Carrier's liability for the difference in rates as back pay is eliminated.

(s) Edward A. Lynch

Edward A. Lynch
Chairman

(s) A. J. Cunningham

A. J. Cunningham
Employee Member

(s) T. S. Woods

T. S. Woods
Carrier Member

Dated at Baltimore, Maryland
this 31st day of May, 1960.