

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

**UNION PACIFIC RAILROAD COMPANY
(former Chicago and North Western Transportation Co.)**

Case No. 251

Award No. 228

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

- (1) The Agreement was violated when the Carrier failed to assign Assistant Foreman/Truck Driver R. J. Kennedy to the assistant foreman positions advertised in Bulletin Nos. 3066 and 3067 dated December 31, 1998. (Organization File 9LF-2725T; Carrier File 1189050.)
- (2) As a consequence of the violation referred to in Part (1) above, Assistant Foreman/Truck Driver R. J. Kennedy shall be allowed the difference in pay between the carpenter's position he was required to work and the assistant foreman position he was denied commencing January 9, 1999, and continuing.

FINDINGS:

Claimant R. J. Kennedy was employed by the Carrier as a carpenter at the time of this claim.

On February 25, 1999, the Organization filed a claim on behalf of the Claimant as a result of the Carrier having denied the Claimant a promotion from the position of carpenter to an assistant foreman position in violation of Rule 16(h), specifically the Claimant's seniority. The Organization argues that on December 31, 1998, Bulletin Nos. 3066 and 3067 were released advertising vacancies for B & B assistant foreman positions at Western Avenue in Chicago, Illinois. The Organization contends that the Claimant

entered his bid for both positions prior to the January 5, 1998, closing date. The Organization further contends that on the effective assignment date of January 8, 1999, the assignment notices indicated that no bids were received for each position; however, the Organization maintains that the Claimant bid on those positions and was the only applicant. The Organization argues that the Claimant possesses a July 8, 1996, assistant foreman/truck driver seniority date and was qualified to bid on the positions advertised in Bulletins 3066 and 3067. The Organization maintains that the Claimant was contractually entitled to the assistant foreman assignment and has suffered a loss of earnings opportunity due to the Carrier's actions. In addition, the Organization argues that there are no Carrier rules or governmental regulations that lend credence to denying the Claimant his assignment due to color blindness. The Organization argues that the Claimant's failure to meet the Carrier's medical standards for train service, specifically the ability to interpret train signal indications, do not apply to Maintenance of Way positions. The Organization contends that the Claimant's color blindness would not conflict with his job performance because he would be assisted by a dispatcher. The Organization maintains that the Carrier has not demonstrated that the Claimant's color blindness would adversely affect his ability to perform the duties and responsibilities required of an assistant foreman. The Organization contends that the Claimant has the applicable seniority, was previously qualified, made timely application for the positions, and was available, willing, and able to work on the assistant foreman position beginning on January 9, 1999. The Organization asserts that the Claimant is entitled to the differential between the carpenter rate and the assistant foreman rate for all hours of

service rendered from January 9, 1999, and continuing until the Claimant is awarded the assistant foreman position in accordance with Rule 21(d). Lastly, the Organization argues that the Carrier's reference to the Claimant's period of medical disqualification from work and involvement in Employee Assistance is not relevant to the issue in this claim.

The Carrier denied the claim. The Carrier acknowledges that the January 8, 1999, assignment notices should have indicated that no qualified bids were received instead of that no bids were received. However, the Carrier maintains that its medical department determined that the Claimant was not qualified for the position of assistant foreman because of his medical condition, i.e., color blindness, which prevented him from effectively and responsibly maintaining the safety of other employees. The Carrier maintains that it could not compromise the safety of the Claimant, his peers, the public, or any others. The Carrier argues that the position of assistant foreman involves interpreting signals and the Claimant would not be able to distinguish colors due to his color blindness. The Carrier asserts that the Claimant obtained his assistant foreman's rights prior to the Carrier having obtained knowledge of his medical condition. The Carrier argues that it maintains the right to set and implement medical standards and did so in this case. The Carrier also argues that subsequent to the Organization's initial claim filed in February of 1999, the Claimant began to exhibit problems with anxiety, chemical dependency, and misuse of medications that presented an unacceptable risk factor for the Carrier. The Carrier contends that the Claimant was instructed to participate in Employee Assistance and comply with the instructions of his psychiatrist, but refused to do so

resulting in his medical disqualification from service in March of 1999. Therefore, the Carrier argues that since the Claimant is not medically qualified to work, all claims for compensation are moot.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Carrier violated the agreement when it failed to assign Claimant Kennedy to the assistant foreman position at issue.

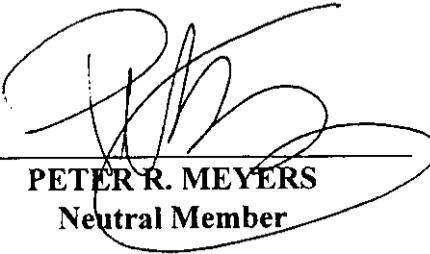
It is fundamental that the Carrier has a right to set and implement medical qualifications for various jobs. In this situation, one of the medical qualifications was not being color blind. It is undisputed that this Claimant is color blind and since recognizing red and green lights is one of the aspects of the assistant foreman position, it was reasonable for the Carrier to find that the Claimant was not qualified to hold that position because he was color blind.

The Organization bears the burden of proof in these types of cases. In this case, the Organization has failed to prove that the Claimant met the minimum qualifications for the job, including the requirement that he not be color blind. Therefore, the claim must be denied.

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AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 4-4-01



R.B. Weiss
CARRIER MEMBER

DATED: 04-11-01