

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations, Inc.

STATEMENT
OF
CLAIM:

(a) Carrier violated Rule 3 when it failed to award the B&B foreman, Gang 69 position at Newark, New Jersey to claimant Harold Shumate.

(b) Claimant shall be granted the position as Bridge and Building Foreman with a date which reflects the original date of the position and shall be paid the difference in rate of pay between B&B mechanic and B&B foreman, including overtime on the position.

FINDINGS:

The B&B foreman position in question was applied for by claimant but was awarded to a junior employee. Carrier found claimant unqualified for the position.

Claimant passed the written examination to determine the required technical knowledge. In an interview, however, it was determined that he lacked the necessary attributes for the position of

foreman. More specifically, Carrier took claimant's discipline record into consideration in determining whether or not he could be a responsible leader. His record shows that he had been dismissed in November 1984 for being unfit to attend to his duties; he was subsequently reinstated on a leniency basis. It also indicates absenteeism, safety violations and leaving an assignment without permission.

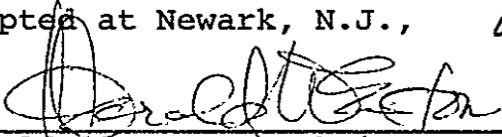
It may be that Carrier will eventually decide that claimant is sufficiently responsible for a foreman assignment. The challenge of a higher position often brings out excellent qualities.

We are not in a position, however, to reverse Carrier's decision. It made its determination only after interviewing claimant as well as other applicants, giving a written test and an analysis of prior records. It is well settled that where, as here, the controlling contract provision prescribes that "In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern," the employer's determination of qualifications will be disturbed only when arbitrary and capricious. The record provides no basis for finding Carrier's decision deficient in those respects.

AWARD:

Claim denied.

Adopted at Newark, N.J., *October 19*, 1987.



Harold M. Weston, Chairman

JS BAKER

Carrier Member

M.E. LARUE

Employee Member