

Referee Harold M. Weston

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Southern Railway Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster D. E. Lamberth be allowed one day's pay at the appropriate Yardmaster rate for each day commencing March 21, 1969 and continuing until condition complained of is corrected on account of failure to recognize the seniority of Claimant, in awarding position of Yardmaster advertised in bulletin No. 13, dated March 13, 1969.

OPINION OF BOARD: The claim is that Carrier breached applicable agreements by awarding on March 21, 1969, a bulletined relief yardmaster position to an employe junior to Claimant. It is undisputed that the latter had the greater seniority and that both employes duly bid for the position.

Rule 16 prescribes that "The oldest qualified Yardmaster" making written application to fill a permanent vacancy or newly created position "shall be assigned to the position at the expiration of the bulletin period." It is Carrier's contention that Claimant was not qualified for the position in dispute.

While we are disposed to permit a carrier considerable latitude in determining qualifications under provisions similar to Rule 16, its right to do so is not unlimited. It cannot validly make such a decision arbitrarily or unreasonably and, where as here, it has passed over a senior employe in filling a position, it is under the obligation of showing specific persuasive considerations that prompted its decision in that regard. A contrary holding could realistically render seniority rights meaningless.

Here, Claimant's seniority as a yardmaster dates back to July 26, 1959, and there is no showing that he was formally disqualified from yardmaster status since that date or that the position was so unusually complex in its requirements that an employe on the yardmaster seniority list could not fill it.

The critical question is whether or not Claimant is qualified and not whether he is less qualified on a comparative basis than the junior employe to whom the position was awarded. The

evidence contained in the record does not establish that Claimant is unqualified to fill the assignment or that Carrier had a reasonable basis to consider him unqualified at the time it was made. The statements signed by five terminal trainmasters and an assistant trainmaster that have been presented to demonstrate Claimant's lack of qualifications are not persuasive, particularly since they were not prepared until the latter part of July 1969, several months after the position had been awarded and the claim initiated.

In the light of this record, considered in its entirety, we are of the opinion that Carrier has violated Rule 16 and that the claim, which is for straight time, should be sustained subject to the provision that Claimant's straight time earnings during the claim period will be deducted from any compensation due under this Award.

**FINDINGS:**

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

**A W A R D**

Claim sustained to the extent indicated, supra, in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

*Muriel L. Humfreville*  
Muriel L. Humfreville  
Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1971.