Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7868
Docket No. 7798
2-SOO-BM-BK-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employes' Department, A. F. of L. - C. I. O. (Boilermakers-Blacksmiths)
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That the Soo Line Railroad Company violated Rule 16 of the current agreement when it assigned a Machinist to position of Blacksmith Foreman at its Fond du Lac Shop, North Fond du Lac, Wisconsin, on March 1, 1977.

2. That accordingly, the Carrier be ordered to additionally compensate Blacksmith Franklin Mesner, based on wages lost for March 1, 1977 and for each date thereafter, until the violation is corrected.

Findings:

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

The carrier or carriers and the employe or employes 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.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to March 1, 1977, the Carrier maintained a Blacksmith Shop, which in fact consisted of a Blacksmith Shop (consisting of a Lead Blacksmith (the Claimant), three Blacksmiths and two Helpers); a Motor Car Shop (12 Machinists, one Carman, one Electrician); a Machine Shop (six Machinists, two Helpers); and a Boiler Shop (three Boilermakers, three Helpers and Laborer). The Blacksmith Shop Foreman, actually in charge of all four shops, retired on February 28, 1977. Subsequently, the Carrier filled the supervisory position, at the same time changing the title from Blacksmith Shop Foreman to General Service Foreman to reflect, according to the Carrier, the changing nature of the functions as they developed over the years, resulting in increasing emphasis on Machinist functions.

The employe selected for the General Service Foreman position had nine years' previous experience as a Machinist and had acted in the past as a Relief Foreman during vacation periods.

The Organization claims that Lead Blacksmith Franklin Mesmer was improperly denied the new supervisory position under the terms of Rule 16, which reads as follows:

> "1. Mechanics in service will be considered for promotion to positions of foremen.
>
> 2. When vacancies occur in positions of gang foremen, men from the respective crafts will have preference in promotion.
>
> 3. Employees covered by this agreement accepting supervisory or official positions, or special assigned duties in the employ of the M. St. P. & S. Ste. M. Railroad Company will retain their seniority at the point last employed before promotion."

On behalf of Mesmer, the Organization notes that Mesmer has Blacksmith seniority dating to 1947; that he has had experience as an Assistant Blacksmith Foreman; that the shop foreman has always been a Blacksmith; and that Mesmer was not properly "considered" for the position.

The Carrier argues Mesmer was "considered"; that the Rule does not restrict the Carrier in its selection of Foreman; and, as noted above, the predominating emphasis of current work in the shop is on Machinists' work. Finally, the Carrier points out that Paragraph 2 of Rule 16 is inapplicable, since the position in question is not that of "gang foreman", nor has this position been filled by anyone for many years.

The Board finds that the Carrier did not act in violation of Rule 16. There is no evidence that Mesmer was not given consideration for the position. "Consideration" is, of course, quite different from selection. The selection of a Machinist from within the shop, in preference in Mesmer, was not arbitrary or discriminatory. The Rule surely does not in any way require the Carrier to select a supervisor from the same craft as the former supervisor.

Awards No. 6578 (Lieberman) and No. 7701 (Weiss), dealing with similar if not identical situations and rule language, are of relevance here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of March, 1979.