

**Award No. 6165**  
**Docket No. 5981-I**  
**2-SLSF-I'71**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

**PARTIES TO DISPUTE:**

**WILLIAM P. ZACK, Painter's Helper**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEE:**

I, William P. Zack, being an up-graded Painter's helper, bid on job as a Painter on Bulletin No. 21, which was vacant at the Roadway Sheds due to H. C. Winters' retirement. This job was a differential job and paid 5 cents more on the hour. Placing my bid, dated 12/15/69 (see enclosed copy), I was the only, as well as the eldest man bidding same, and as stated in enclosed letter, dated January 1, 1970, by C. H. Schmitt, local chairman, states that I was assigned this job by Mr. J. R. McClaggin. According to Rule No. 17 on page 14 of the agreement between the St. Louis-San Francisco Railway Company and System Federation No. 22, Railway Employees' Department, AFL-CIO, states the oldest man in seniority should be awarded the job he bids on, provided no other one has bid same in. I not only was the oldest man, but the only man to bid this job in. The bid was up at 12:00 Noon on 12/15/69 and my bid was placed at 10:00 A. M. in the morning of the same day. The same afternoon of the stated above I inquired to who was awarded this bid, and was told by the clerk in the office at the car shops that I was, but that Mr. K. I. Dyche of the consolidated mechanical shop was not going to allow me to work the job as he had frozen my present job at the car shops. Contacting my local chairman, Mr. C. A. Schmitt was told that Mr. Dyche could keep me at the car shop if he saw to do so and that there was nothing he could do about the situation. The job stayed open till Thursday 12/18/69, at which time they sent an up-graded helper, Mr. Glenn Brittan, to the job and the same day Mr. Brittan was informed that he should return to his other job at the coach shop as they, Mr. J. R. McClaggin, had hired a painter off the street and that he would be there for work in the A. M. of 12/19/69. This man was a carman in Oregon and had not paid any dues to his union since 1962 and was suspended from same and hired out to fill the job that I had previously bid in and was assigned to by Mr. J. R. McClaggin, superintendent of the Roadway Sheds. He worked overtime as well as regular hours, according to past practices of the shops the oldest man is asked to work this overtime and so on down the line, but no one was even asked to work, they just told this. In my opinion scab, to work the job he was not entitled to in the first place. It furthermore has been the past practice that any man coming to work from

another Railroad will displace the youngest up-graded helper or apprentice and take his rightful place on the seniority roster, which again he did not do as I had a younger man than me working, Roger Phillips. Another painter's job came open and the bid was up at 12:00 Noon 1/23/70 and this job also was a differential job and was at the Coach Shops. Again I was frozen on my present job and not allowed to work it. They placed Mike Beaver's up-graded apprentice on this job and never even asked him if he wanted the job either. Therefore, I feel that I have been discriminated against and ask this Board to find same and reinstate me on this job without loss of seniority and pay me for all time the man worked this job including overtime. Or settle with cash settlement.

Since I was denied my rights to work these two jobs and was frozen on my present job at the carshops, I feel that I have some back pay and a legal time claim coming me and that the Carman that Mr. J. R. McClaggin hired and was not a union member in good standing should not be allowed to work this painter's job at the Roadway Shops as in Springfield, we have two separate rosters for carmen and painters. When I went from a carman helper to a painter helper, I had to sign away my rights as a carman helper and start at the bottom of the painter helpers' list but yet they hire a carman to take a painter's job that was rightfully mine. I was given a call back letter to go as a machinist's helper on Midnights and in order not to lose out all the way around I accepted and am not in the least bit happy either. Every other up-graded painter's helper or apprentice has been given the chance to work these other jobs but me. Mike Beaver's apprentice was sent to the diesel shop to fill a temporary vacancy and since he was oldest, worked same. Glenn Brittan just up ahead of me in seniority was sent to work the job I was assigned to as well as when Mack Maples retired from the coach shop he bid the job in and since he was the oldest and only one to bid on the job was allowed to work same, but when I bid these jobs in they froze me on the job at the car shops. Is this not then discrimination? Please consider this and I know you and your Board will do all that they can in their power to rectify this situation and see that I am treated equal as to have been the other men in the same craft and situations.

**CARRIER'S STATEMENT OF FACTS:** Under the seniority rules of the agreement painters, apprentices, and helpers are a seniority sub-division of the Carmen's Craft.

On account of a retirement, the Superintendent Roadway Shops issued Bulletin No. 21, dated December 8, 1969, advertising vacancy for a journeyman painter in the Roadway Shops with assigned hours 7:30 A.M.-12:00 Noon and 12:30 P.M.-4:00 P.M. Monday through Friday with days off Saturday and Sunday. The rate of pay shown on the bulletin was \$3.5585 per hour.

The claimant, painter helper in the Freight Car Shops, made application for the journeyman vacancy. No other employe bid or applied for the vacancy. The vacancy was filled by a newly hired journeyman painter.

The claimant entered service January 10, 1966 as a steel bridgeman in the Maintenance of Way Department. He transferred to the Maintenance of Equipment Department, establishing seniority as a machinist helper June 15, 1966. When furloughed as a machinist helper, he accepted employment as a laborer, establishing seniority as such May 4, 1967. He transferred to

The claimant had been provisionally upgraded in the freight car shops to perform painter's work, but he had not acquired seniority as a journeyman painter to permit him to claim rights to assignment to the journeyman painter vacancy in the roadway shops.

Rule 136 further provides:

"Promoted apprentices and promoted helpers who have not acquired seniority date as mechanic will be set back at any time that qualified mechanics with four or more years experience are available."

In accordance with Rule 136, the newly hired qualified journeyman painter was entitled to preference in the filling of the painter vacancy in the roadway shops, and in these circumstances there is no basis in fact for the allegation that the carrier's action was discriminatory to the claimant.

Finally, and insofar as the carrier has knowledge, there is no dispute between this carrier and the Brotherhood of Railway Carmen concerning the filling of the painter vacancy at the Roadway Shops.

On the basis of the record and all the evidence, the Board is respectfully requested to find that the carrier did not violate the agreement and to either dismiss or deny the claim.

**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 were given due notice of hearing thereon.

The record indicates that the claim which Petitioner is attempting to assert before this Board was not handled on the Carrier's property pursuant to the provisions of the collective bargaining agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Accordingly, the claim is barred from consideration and is dismissed without prejudice.

#### AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1971.

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