

Award No. 9603
Docket No. MW-8483

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE BELT RAILWAY COMPANY OF CHICAGO

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

(1) The Carrier violated the Agreement when it failed and refused to assign Extra Gang Foreman A. Staszak to the position of Extra Gang Foreman advertised in Bulletin dated September 24, 1954 and assigned the position to a junior applicant;

(2) Claimant A. Staszak be assigned to the position referred to in part (1) of this claim;

(3) Claimant A. Staszak be compensated for all additional time consumed and reimbursed for all additional expense incurred in traveling the additional distance from the headquarters of the gang to which he was assigned which is in excess of the distance he would have to travel if properly assigned to the position advertised in the Bulletin dated September 24, 1954.

EMPLOYEES' STATEMENT OF FACTS: Under date of September 24, 1954 the Carrier issued the following bulletin:

"Clearing, September 24, 1954

THE BELT RAILWAY COMPANY OF CHICAGO
BULLETIN FOR POSITION IN TRACK DEPARTMENT

Position—Extra Gang Foreman

Location—General

Hours of Service—7:30 A. M. to 4:00 P. M.

Rate of Pay—\$344.36 per month—\$2.97 overtime rate—(Rates of pay indicated are subject to change in accordance with cost of living wage adjustment agreement)

cruing to a "Section" Foreman's position is not sufficient reason to penalize this Carrier. If claimant desired a more permanent work location, he should have properly sought a Section Foreman's position. Employees' assumption that assignment of any particular Extra gang would have resulted in claimant being closer to home is not a fact and Carrier's records bear this out. No rules of the agreement support the Employees' claim in this respect.

For the above reasons, the Carrier feels the Employees' claim is without merit and should be denied.

All data in support of the Carrier's position have been submitted to the Organization and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In its Maintenance of Way Department this Carrier has two Extra Gang Foreman assignments with common territory extending over Carrier's entire trackage, and the two jobs are identical in all respects. The Claimant held one of the Extra Gang Foreman assignments at the time he made application for an identical bulletined job on September 23, 1954. The Carrier did not honor his application but accepted the next senior applicant who was eligible. The Organization instituted a claim alleging violations of certain rules pertaining to seniority and promotions.

The bulletin for the Extra Gang Foreman position in the track department describes the location of the position as "general". The Organization contends that the use of the word "general" by Management fails to identify the headquarters of the position advertised. Since the Carrier maintains some twenty-six miles of double trackage extending from South Chicago to the northwestern part of Chicago we think the use of the word "general" does not adequately designate a location as contemplated by Rule 30 in the Agreement. This Board in Award 8290, involving these same two parties, sustained the Organization's claim that the word "general" was too inadequate and indefinite to properly designate a location. We think the Board's ruling in Award 8290 is correct and applicable to that part of the dispute in this case regarding the use of the word "general" as a location for a position to be filled.

Seniority rights are valuable rights and must not be passed over lightly. The evidence herein is undisputed that the Claimant was qualified and senior to the successful bidder. This Board has held that the home station of a position is very important to an employee bidding on a job. See Award No. 3170. Part 3 of this claim implies that the Claimant may have suffered a loss because of expense incurred by traveling a distance greater than he would have, had he been awarded the position. The amount of loss, if any, is not calculated in the record. There is no affirmative evidence supporting a loss and neither is there any evidence establishing the reporting place for the two positions of Extra Gang Foreman. Consequently, we must dismiss part 3 of the claim, but will sustain parts 1 and 2 for the foregoing reasons.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Violation as to parts 1 and 2 of claim.

AWARD

Sustain as to parts 1 and 2 of claim and deny part 3 of claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of October, 1960.

DISSENT TO AWARD NO. 9603, DOCKET NO. MW-8483

Award No. 9603 errs in sustaining parts 1 and 2 of the claim on wholly unsupported assumptions.

Petitioner's submission states that,

"There is no dispute between the parties with respect to the extra gang foreman's position here involved being properly bulletined * * *."

That part of the Opinion concerning any impropriety of the bulletin is in conflict with the record.

The absence of evidence to support part 3 of the claim, together with the absence of a conclusive finding of a particular rule violation, warranted denial of the claim in its entirety.

For these reasons, among others, we dissent.

/s/ **J. F. Mullen**

/s/ **R. A. Carroll**

/s/ **W. H. Castle**

/s/ **C. P. Dugan**

/s/ **J. E. Kemp**