



Award No. 15878

Docket No. MW-16374

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) Mr. J. E. Dorias should not have a seniority date as a B&B foreman on Wymore Division and should be shown on the "Eligible List - Rule 22" below Mr. H. A. Story.

[Carrier's File M-1111-65]

EMPLOYES' STATEMENT OF FACTS: On December 31, 1964, B&B Foreman W. Maine suffered a heart attack which prevented him from performing the duties of his position until February 1, 1965. The temporary vacancy on his position was advertised by bulletin reading:

"CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

Office of Superintendent

Omaha - Lincoln - Wymore Divisions

Wymore Division Vacancy and Assignment Notice No. 1965-1

Lincoln, Nebraska

January 7, 1965

**All B&B Foremen, Asst. Foremen
Wymore Division:**

**Application will be received in writing in this office until Noon
Monday, January 18, 1965, for the following position:**

Title of Position:	Foreman B&B Gang No. 7
Location:	Wymore, Nebraska
Rate of Pay:	\$521.38 per month
Assigned Hours:	8:00 A. M.-4:30 P. M. One-half hour meal period
Rest Days:	Saturday and Sunday
Duration:	Temporary

**W. S. Johnston
Superintendent"**

March 3, 1959, after successfully passing the required examination referred to in Rule 22. During 1965 he worked as foreman from January 1 through January 29; June 28 through July 9; July 19 through August 6; December 27 through December 31.

H. A. Story entered service as a B&B laborer on April 14, 1941, on the Wymore Division; he was promoted to B&B mechanic on May 11, 1942, and transferred to the System B&B Department as a machine operator on June 16, 1947 on Lines East (Wymore Division is on Lines West). He has not worked as a B&B mechanic in any gang since June 16, 1947; he has never qualified as a relief foreman, nor has he ever expressed a desire to be considered for promotion to foreman or to take the examination referred to in Rule 22, until after Dorias was assigned temporarily as foreman of Wymore B&B Gang No. 7, in December of 1964.

The regularly assigned foreman of B&B Gang No. 7, Wymore Division, laid off account illness in the middle of December, 1964, and Relief Foreman Dorias was assigned to replace him. When it became known that the regular foreman would be off duty for more than 30 days, the vacancy was bulletined on January 7, 1965, and it was assigned to J. E. Dorias, the only qualified applicant on January 28, 1965, in conformity with the provisions of Rule 26, and was given a seniority date of January 28, 1965, per Rule 4(c). The only other applicant for the vacancy was H. A. Story, who was not qualified.

In response to written request from H. A. Story, following posting notice to applicants who desire to be examined for promotion to assistant foreman and foreman as per Rule 22 (a), he was furnished the necessary material and given 30 days to prepare for examination. He was examined and passed the examination on March 31, 1966. He was then placed on the eligible list referred to in Rule 22, paragraph (b). Since that date he has continued to work as a machine operator on Lines East, and has as yet never worked as a relief foreman or assistant foreman.

The schedule of Rules Agreement between the parties, effective September 1, 1949, and amendments thereto, are by reference made a part of this submission.

OPINION OF BOARD: A treatise in this case would serve no useful purpose. A careful consideration of the Record and of the argumentation presented by and in behalf of the parties compels us to reach the following conclusion: That the seniority preferential rights of the Claimant were not recognized by the Carrier in the instant dispute, particularly in regard to Rule 22 of the Agreement of the parties.

The claim should be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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

That the Agreement was violated.

AWARD

Claim sustained and allowed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.