



Award No. 16109
Docket No. MW-16209

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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 the position of garage serviceman as advertised by Gary Division Bulletin No. 3382 to Track Laborer W. M. Hembree, who was the senior applicant for said position. (System Case No. SG-9-64 - WM-11-64.)

(2) Track Laborer W. M. Hembree be allowed the difference between what he was paid at the track laborer's rate and what he would have received at the garage serviceman's rate had he properly been awarded the position referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant had established and held seniority as a section (track) laborer within Group 1 of the Track Sub-Department as of April 23, 1960. He had never established or held seniority in any other group or rank, but he had frequently been temporarily assigned to work as a roadway machine operator.

Mr. W. R. Findley had established and held seniority as a section (track) laborer as of May 28, 1964. He did not hold any other seniority within the Maintenance of Way Department. He was never assigned and used — temporarily or otherwise — to perform the work of any other group or rank included therein.

Under date of **June 22, 1964**, less than a month after Track Laborer Findley entered its service, the Carrier issued a bulletin reading:

"No. 3382

Joliet, Illinois
June 22, 1964

To: All Employees

(Scales & Work Equip. Subdept., Gary Divn.
(Group 2, Track Subdept., Gary Divn.
(B&B Subdept., Gary Divn.
(All Others, Track Subdept., Gary Divn.

"CONSIDERATION

Rule 3. Rights accruing to employes under their seniority entitles them to consideration for positions in accordance with their relative length of service with the railroad as hereinafter provided."

"ASSIGNMENTS

Rule 6.

* * * * *

(b) Vacancies or new positions, except those of motor car repairmen (permanent vacancies in motor car repairmen positions shall be filled in accordance with Memorandum of Understanding of November 8, 1939, between committees representing Shop Craft and Maintenance of Way Employes, and the EJ&E Railway Company), in the Scales and Work Equipment sub-department will be filled first by employes holding seniority in the group and rank in which the vacancy or new position occurs. If not so filled, they will be filled by qualified employes in succeeding lower ranks in that sub-department. In the event the vacancies or new positions are not so filled by employes in the Scales and Work Equipment sub-department, they will be filled by qualified employes from Group 2 Track sub-department desiring same or qualified employes desiring same from the Bridge and Building sub-department and the Track sub-department in that order before hiring a new employe. Employes so assigned will retain their seniority rights in the respective other groups and sub-departments from which taken."

"MAKING PROMOTIONS

Rule 8. Promotion shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail, management to be the judge of ability and merit, subject to appeal."

"FAILURE TO QUALIFY

Rule 10. Employes awarded bulletined positions will be allowed sixty (60) calendar days in which to qualify for such position, and failing to do so will be so notified within seven (7) calendar days of the expiration of the sixty (60) day qualifying period, at which time they will have the right to return to their former positions without loss of seniority."

(Exhibits not reproduced.)

OPINION OF BOARD: On June 22, 1964, the Carrier posted Bulletin No. 3382, advertising position of Garage Serviceman. Bids were received from one employe besides claimant. Claimant was denied the position as "not qualified." Carrier assigned the position to a junior Track Laborer who had bid for the position.

Carrier's Supervisor Scales and Work Equipment declined the Organization's claim on behalf of Claimant. He stated that in the instant case, Mr. Hembree failed to attain a passing score when given the "Wonderlic Mental Ability Test"; therefore, it was determined that he did not have sufficient ability to be considered for the promotion to the position of Garage Serviceman.

This dispute is identical in principle with cases covered by our Awards 15002 (Zumas), 15586 (House), 15972, 16107 and 16108 (Mesigh), involving the same parties, rules, and in substance the same issue. Our findings in those Awards are dispositive of the issues in the instant dispute, and following the principle of Stare Decisis, we sustain the claim here.

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1968.