

**Award No. 16158**  
**Docket No. MW-16206**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John J. McGovern, 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:

(a) The Carrier violated the Agreement when it failed and refused to assign the position of garage serviceman as advertised by Gary Division Bulletin No. 3372-A to Track Laborer O. G. Lopez and assigned the position to junior Track Laborer E. Lemons.  
(System Case No. SG-10-64 WM-13-64.)

(2) Claimant O. G. Lopez be awarded the position of garage serviceman, with a seniority date in that class as of the date of Gary Division Bulletin No. 3372-B.

(3) Claimant O. G. Lopez be reimbursed for all wage loss suffered because of the violation 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 February 25, 1957. 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 and as a truck driver.

Mr. E. Lemons had established and held seniority as a section (track) laborer within Group 1 of the Track Sub-Department as of June 2, 1964. He did not hold any other seniority within the Maintenance of Way Department. He had never been assigned and used — temporarily or otherwise — to perform the work of any other group or rank included therein.

Under date of June 8, 1964, six (6) days after Track Laborer E. Lemons entered its service, the Carrier issued Bulletin No. 3372 advertising a Scales and Work Equipment Sub-Department position of garage serviceman. Said bulletin was cancelled the following day, and the aforesaid position was re-advertised by Bulletin No. 3372-A, which reads:

## "ASSIGNMENTS

### Rule 6.

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(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 Employees, and the EJ&E Railway Company), in the Scales and Work Equipment sub-department will be filled first by employees 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 employees in succeeding lower ranks in that sub-department. In the event the vacancies or new positions are not so filled by employees in the Scales and Work Equipment sub-department, they will be filled by qualified employees from Group 2 Track Sub-department desiring same or qualified employees desiring same from the Bridge and Building sub-department and the Track sub-department in that order before hiring a new employee. Employees so assigned will retain their seniority rights in the respective other groups and sub-departments from which taken.

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## "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."

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## "FAILURE TO QUALIFY

Rule 10. Employees 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.

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(Exhibits not reproduced.)

**OPINION OF BOARD:** The issue presented in this case is identical to that resolved in Award 16157, and the Petitioner and Respondent are identical. We adhere to and adopt the reasoning contained in that opinion and will deny the claim.

**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 Carrier did not violate the Agreement.

**AWARD**

Claim denied.

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

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1968.