



Award No. 17848

Docket No. MW-18449

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES**

SEABOARD COASTLINE RAILROAD COMPANY

STATEMENT OF CLAIM:

- (1) The Carrier violated the Agreement when it failed and refused to assign the position of steel bridge gang foreman as advertised by Bulletin No. 479 to Steel Bridge Mechanic C. M. Coppedge, who was the senior applicant for said position. (System File C 4 C. M. Coppedge /M-49).
- (2) Steel Bridge Mechanic C. M. Coppedge now be assigned to the aforesaid position of steel bridge foreman and be allowed the difference between what he was paid at the steel bridge mechanic's rate and what he would have received at the steel bridge gang foreman's rate had he properly been awarded the position referred to in Part (1) of this claim.
- (3) The seniority roster maintained for System steel bridge forces be adjusted so as to reflect the same information as would have been shown had the assignment here in dispute been properly made.

EMPLOYEES' STATEMENT OF FACTS: The claimant holds seniority within the System Steel Bridge Subdepartment as a steel bridge mechanic helper from July 7, 1942 and as a steel bridge mechanic from December 20, 1942. Mr. B. M. Hendricks holds seniority within said sub-department as a steel bridge mechanic helper from September 16, 1948 and as a steel bridge mechanic from October 18, 1950. Neither employe has acquired seniority as a steel bridge gang foreman.

The Carrier issued Bulletin No. 479, advertising a permanent position of steel bridge gang foreman, which reads:

**"SEABOARD COAST LINE RAILROAD COMPANY
ENGINEER OF BRIDGES
BULLETIN NO. 479**

Jacksonville, Fla., Jan. 2, 1968
38556

TO ALL CONCERNED:

The following position is bulletined for bids, applications for which will be received from Jan. 5, 1968, to Jan. 15, 1968:

junior Steel Bridge Mechanic Hendricks being awarded the position of Foreman on Steel Bridge Force No. 4 on January 22, 1968.

"You did not present anything new in support of the claim and it was pointed out to you that the record in this case fully supported the action of the Carrier. Therefore, you were advised there was no reason for changing our decision of December 10th."

Rule 2(b) of the applicable agreement provides:

"Appointments to new positions, or to fill vacancies, other than laborers, will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the employees entitled to consideration, during which time employees may file applications with the official whose name appears on the bulletin. Appointment will be made before the expiration of fifteen (15) days from date of bulletin. Ability and merit being sufficient, seniority shall prevail in the appointment."

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The claim herein is that Claimant, a steel bridge mechanic, should have been assigned to a bulletined position of Foreman, Steel Bridge Gang No. 4, which position was awarded to a junior steel bridge mechanic.

Rule 2(b) of the applicable Agreement reads:

"(b) Appointments to new positions, or to fill vacancies, other than laborers, will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the employees entitled to consideration, during which time employees may file applications with the official whose name appears on the bulletin. Appointment will be made before the expiration of fifteen (15) days from the date of bulletin. Ability and merit being sufficient, seniority shall prevail in the appointment."

The Carrier contends that Claimant lacked sufficient ability and merit for the position sought.

In numerous Awards of this Board, in construing rules similar to Rule 2(b) here involved, we have adhered to the principle that the Carrier's determination of ability and merit will not be disturbed unless it is shown that the Carrier acted arbitrarily, capriciously or in bad faith. A careful study of the entire record fails to show that the Carrier's action in this particular case was arbitrary or capricious. The claim will, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.