

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19499
Docket Number MW-19439

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company
(- Coast Lines -

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

(1) The Carrier violated the Agreement when it assigned Painter Jack N. Malone instead of Painter F. E. Myers to relieve Paint Foreman Anderson during the period extending from July 14 to August 15, 1969 inclusive (System File 130-82-1).

(2) Painter F. E. Myers be allowed the difference between what he would have been paid at the paint foreman's rate and what he was paid at the painter's rate of pay because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: On May 19, 1969 Painter F. E. Myers, the Claimant, made written application to S. Rogers, Superintendent of the Atchison, Topeka and Santa Fe Railway for promotion to the position of B&B paint foreman on the old San Francisco Terminal Division Seniority Division.

Mr. Myer's seniority date of position is July 27, 1947. He worked as relief paint foreman beginning in 1949 to October 1955.

Mr. Anderson, the regularly assigned San Francisco Terminal Division paint foreman went on vacation July 14 through August 8, 1969 inclusive. Moreover, he was granted a requested leave of absence of one week which prolonged his absence to August 15, 1969.

Although Claimant applied for promotion to the paint foreman's class, Carrier chose junior painter Jack Malone to relieve Foreman Anderson during the latter's absence.

The Organization submits that Carrier was in violation of the agreement and calls our attention to the following allegations:

1. Mr. Myers is senior to Jack Malone, who was promoted to paint foreman July 14, 1969.

2. Mr. Myers signified his desire for promotion in writing to the Superintendent with a copy to the Division Chairman.

3. Mr. Myers once passed oral and written examinations for the position of paint foreman.

4. Mr. Myers demonstrated his ability to perform work in the higher class (paint foreman) during the period 1949 to October 1955.

5. Section 1 of Article III of the Agreement provides that when fitness and ability are sufficient seniority shall prevail.

The evidence in the record is in sharp conflict as to whether the performance of the Claimant in the distant past would support a contention that he had demonstrated the fitness and ability to be promoted to paint foreman. Moreover, the examinations he passed were given before 1954.

In view of the aforementioned conflict, and the belief of the Board that Claimant did not prove he was qualified for promotion at the time this claim arose, we are unwilling to interfere with the judgment of the Carrier.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.