

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20883
Docket Number ~~MW-20944~~

Joseph A. Sickles, **Referee**

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way **Employees**
{ **Missouri-Kansas-Texas Railroad Company**

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

(1) The Carrier violated the Agreement when it failed to assign Mr. Glen M. Webb to the position of Foreman on Circular **No. 194**, dated ~~June 19~~ 1973 but assigned **Mr. H. G. Edwards** thereto (System **File 300-33/2579-4**).

(2) That Bulletin No. **194**, dated June **19, 1973**, be withdrawn and assignment made to Mr. G. M. Webb.

(3) That Mr. Glen M. Webb be allowed the difference In what he receives as Assistant and/or Relief Foreman and what he should receive from June **19, 1973** as Foreman and continuing until claim **is** settled.

(4) That, in addition to the **money** amounts claimed herein, the Carrier shall pay Claimant an additional **amount** of **6%** per annum compounded annually on the anniversary date of this claim.

OPINION OF BOARD: On May 24, 1973, **Carrier** issued Circular No. **189** advertising the position of Foreman on Section 453 (effective June 19, 1973).

Both Claimant and employee, Edwards, submitted **applications**. No bids **were** received from any employee with seniority In the **Foreman classification**, and on June 19, 1973, Edwards was assigned to the position.

Claimant's track laborer seniority date is March 4, **1963**; whereas Edwards' seniority date is January 19, **1970**. In addition, Claimant was **promoted** to Assistant Section Foreman on March 17, **1970** and was selected to perform duties as a Relief Foreman on June 12, **1972**. Edwards had no Assistant Foreman seniority, nor had he been selected to be used **as a** Relief Foreman.

The Organization cites Article 4, Rules 1 and 2:

"ARTICLE 4. PROMOTIONS AND BULLETINS

Rule 1. The Division Engineer will select from Track Laborers' roster not to exceed four men on each seniority district to be used as relief assistant track

"foreman and/or track foremen on **their** respective seniority districts. The Track Laborers so selected **will** be **advised** In **writing**, a copy of such advice **will** be sent to **General Chairman** and to **Local Chairman**. The men so selected shall be those the Division Engineer **regards** as **most likely** material for promotion to **assistant track foreman and/or foreman**. These men **shall** be used for relief assistant track foreman and/or track foreman's work **on** their seniority district, and if **their** work as relief foreman or **assistant foreman** during the period of twelve **consecutive months** following their selection for relief work is satisfactory and they **pass** satisfactory **examinations**, they shall be eligible in the order of their written designation as relief foreman for **promotion** to assistant track **foremanship and/or track foremanship** on their seniority district. Where conditions make **necessary** men may be **promoted** in less than twelve months.

Rule 2. **New** positions and vacancies shall be **bulletined within** within ten (10) **days** previous to **or following** the date such vacancies occur and the right to bid on such vacancies **or new** positions will be accorded foremen, **assistant and/or relief foremen** in the order **named**."

Carrier states that the **issue** presented to this Board **has** been settled **time** and again by **Awards** of this Division and Public Law **Boards**, and **urges** that because nine (9) Award.9 (by **seven** (7) **diferent** Referees) have denied **similar claims** on **this property**, the prior **decisions** must control.

The employees concede that the prior Awards, cited by Carrier, have considered promotion from a lower **rank** to a higher rank, but **none** of **those Awards** involved a **promotion** in which an Assistant Foreman (and qualified Relief **Foreman**) was involved, except 20062. We **are asked** to consider the distinctions which **appear in** that Award - and **this** Docket; am **contrasted** to the **different** factual **circumstances** which controlled the **Awards** relied upon by Carrier.

We do **not** fully concur with the contentions advanced by either party. Certainly, we do not read the pertinent **Rules Agreement** as "obligating" Carrier to assign **Claimant** to the position solely because he held seniority as an Assistant Foreman. At the **same time**, we cannot accept the Carrier's conclusion that because **Claimant** held no seniority in the classification of Foreman, his seniority in lower classifications is meaningless.

Clearly, the prior Awards of this Board (but for Award 20062) concerning this rule have consistently held that seniority in a lower classification does not entitle the employee, per se, to a promotion to a higher classification. Award 20062 does consider the factor of seniority in the classification of Assistant Foreman - which is mentioned in Article 4, Rule 2, and concludes that said section does give an employee so situated certain rights. But, under this record, we are not prepared to rule that Award 20062 disposes of the issue.

We do not read that Award as authority for the proposition that Claimant has an automatic right to promotion. The Award speaks in terms of "consideration" for assignment to a Foreman's position and "rights to bid." However, in this case, Carrier raised, on the property, some rather serious questions of lack of qualifications which dictated its determination to refuse to promote Claimant, and from the evidence properly before this Board for consideration, we are unable to conclude that the employees presented sufficient evidence upon which we can conclude that Carrier's determination in that regard was arbitrary or capricious. We are unable to find any suggestion that this Board was faced with such a question when it issued Award 20062.

Thus, while we find merit in the conclusions expressed in Award 20062; nonetheless, we are unable to conclude that it dictates a sustaining Award because of the question of lack of qualification presented here - but not under review in that case.

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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.