

NATIONAL RAILROAD ADJUSTMENT BOARD

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Award Number 21573
Docket Number MW-21054

Lloyd H. Railer, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company
(Pacific Lines)

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

(1) The Agreement was violated when the position of Assistant Water Service Foreman advertised in **Bulletin No. 560** dated May 11, 1972 was **awarded** to an applicant who

- (a) was junior to applicant R. L. **Bolin**;
- (b) had not furnished a copy of his application to the Division **Chairman**. (System File MofW 148-342).

(2) Claimant R. L. **Bolin** now be

- (a) assigned to the position of Assistant Foreman on **WS&F Gang No. 3**, Los Angeles;
- (b) given a seniority date of Assistant Water Service Foreman as of the date junior applicant McDaniel was **assigned** to the position **in** question;
- (c) compensated the difference **in** the rate of his position and rate of Assistant **Foreman** as of the date McDaniel first received the rate of **pay** of Assistant Foreman, **Water Service** Sub-Department **and** all **subsequent** days **thereto**.

OPINION OF BOARD: Under Rule 5(a) of the Agreement "**/s/**seniority of **employees** in all sub-departments shall be **shown by** classes and **each occupation** shall constitute a class." Seniority in all classes (except laborers and helpers) begins as of the date the **employee** is assigned by **assignment** notice to the class or as of the date that he qualifies for a class **under** the provisions of **Agreement** Rule 8. **Rule 7** defines **promotions** as "**advancement** from a lower class to a higher class. Subject to the applicable qualification requirements set forth in Rule 8, **promotions** will be based on **seniority**."

None of the seven **employees** who entered applications in response to the **May 1, 1972** posting of a vacancy in Position No. 1, Assistant Foreman, Water Service and **Fuel** Gang No. 3 at Los Angeles held seniority in the class involved (seniority Class No. 2). Although Claimant **Bolin** was among the bidders, Carrier selected another bidder--G. R. McDaniel--who was junior to claimant as a Water Service Mechanic (seniority Class No. 7). Claimant thereafter filed the subject claim.

Carrier states it considered claimant unqualified for the subject position. Since Carrier bears a heavy responsibility to the public and its **employees** for safe and efficient operation, we are normally loath to disturb its judgment on **employee qualifications**, absent a showing that an adverse determination on qualifications was arbitrary or capricious. But claimant asserts that on or about June 30, **1966** he filed a written application to qualify for the position of Assistant Water Service Foreman, per Rule 8. **Although** Carrier responds it has no record of having received such an application, Carrier Exhibit "D" **quotes** one of its Superintendents as stating he was advised that **claimant** had **filed** an application for qualifications. Carrier further notes that a few months before the subject incident occurred, two other **employees** also junior to claimant as Water Service Mechanics obtained seniority in the Assistant Water Service Foreman class, Los Angeles Division, and the January 1972 seniority list reflecting these facts was "accessible" to claimant, but he did not protest. Petitioner contends the successful bidder failed to furnish a copy of his application to the Organization's Division **Chairman**, as required by Rule 10(b).

Although the successful bidder failed to follow the prescribed procedure, such failure does not **mean** that Claimant **Bolin** was qualified for the desired position. **The** record shows claimant. slept on his Rule 8 rights. **The** record also shows Carrier failed to live up to the responsibilities it undertook when Rule 8 was adopted. **The award** will be **that claimant shall** be offered immediate opportunity to qualify for an Assistant Foreman **position** similar to the position involved in the present dispute, and--if he qualifies--shall be offered the next such vacancy that develops, with adjustment in seniority date and compensation as requested in **the** claim.

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;

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5at 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 violated.

A W A R D

Claim sustained to extent indicated in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of 5ird Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.