

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22589
Docket Number MW-22712

John J. Mangan, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(**Elgin, Joliet & Eastern Railway Company**

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

(1) The Agreement was violated when the position of Water Service Mechanic as advertised in **Bulletin No. 6418** was awarded to an **applicant junior** to Painter J. Budzevski (System File No. **TM-2-77/SC-5-77**).

(2) Bulletin **No. 6418-A** was further in violation of the Agreement because the applicants were **not** listed thereon in seniority order.

- (3) a. **Bulletin No. 6418-A** be cancelled and rescinded;
- b. The position of Water Service Mechanic be awarded to Mr. J. **Budzevski**;
- c. Claimant **Budzevski** shall be allowed the difference between what he earned as a **painter** and what he should have **earned** as a water service mechanic if he had been awarded the water service mechanic's position, beginning with the date of **Mr. Krumrie's** initial assignment thereto and to continue until the violation is terminated."

OPINION OF BOARD: This dispute centers on the Carrier's awarding a Water Service Mechanic's position to junior employee **Carpenter E. Krumrie** rather than Claimant. Carrier says it took this action based upon the **harmonious** application of Rule 32 (a) and Rule 27 (b) of the current agreement, which provide in **relevant part** as follows:

"32 (a) . . . if not so **filled, they** will be filled by qualified employees in succeeding lower **ranks** in that seniority group in accordance with Rule 27 (Making Promotions). In the event that vacancy or **new** position is not so filled by employees in the **seniority group in** which it occurs, then **it will** be filled by qualified employees **from** other seniority

"groups in the respective sub-department desiring it before employing new men. **Employees** so assigned will retain their seniority rights in their respective **groups from** which taken."

Rule 27 (b):

"An employe promoted from a *lower* to higher rank **will** rank **above** an **employee** declining promotion. An employe accepting promotion **will** have **priority** **in** consideration for further promotion,"

Carrier says that in applying these rules together, it was obligated to give Mr. **Krumrie** first consideration for the assignment **since he had advanced himself to** higher ranked positions during his career, such as Garage Serviceman and *Motor Car* **Repairman**, albeit true that they were in a sub-department other than the sub-department in which the Water Service Mechanic's vacancy occurred.

The union, on the otherhand, says that this action was erroneous because Rule 32 is clear and unambiguous - such vacancies **will be filled** ". . . by qualified employes in succeeding lower ranks in that seniority group in accordance with Rule 27 (Making Promotions)." In this light, since Claimant held seniority and was working in the Water Service Group when he made application for this job (albeit on a lower ranked, Water Service Mechanic Helper job), he should have been given priority for the assignment under Rule 32 (a).

Similar issues have been before the Board in two previous cases, **Third Division Awards 14320 and 20533**, both involving these same parties. The parties here have negotiated unusual seniority and assignment rules which are not comparable, generally, to others in the rail industry. Granted, the position of the employes seems to have merit in equity and logic - but so does the interpretation of the Agreement rules advanced by the Carrier - which it says have been applied in this **manner** for as long as they have been **in** effect. While the facts in Award **14320** and **20533** may have been dissimilar, we are unable to conclude, from our review of this case, that the principles established by these decisions in interpreting the rules of the agreement here in dispute are incorrect. It appears this dispute sporadically arises between the parties, and we suggest that if the parties are unhappy with the current application of such rules, they sit down and negotiate changes **which** would be **more** acceptable. **This Board** is without such power.

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.

RATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of October **1979**.