

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 22847
Docket Number **MW-22867**

George E. **Larney**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(**Lake Superior & Ishpeming** Railroad Company

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

(1) The Agreement was violated when the position of assistant mechanic **as advertised** in Bulletin No. 5 was awarded **to** an applicant junior to Section Laborer R. C. Wiitala.

(2) **a.** Bulletin No. 5 be cancelled and **rescinded**.

b. The position of assistant mechanic be awarded to Mr. R. C. **Wiitala**.

c. Claimant Wiitala shall be allowed the difference between what he earned as a section laborer and what he should have earned as an assistant mechanic if he had been awarded the assistant **mechanic's** position beginning with the date of Mr. Woodruff's initial **assignment** thereto and to continue until the violation is terminated."

OPINION OF BOARD: **On** February 16, 1978, Carrier issued Bulletin No. 5 soliciting applications for Assistant Mechanic's position Located at Carrier's Eagle Mills **facility**. Prospective applicants were given till, 5:00 P.M. on February 27, 1978 to file bids for the position. The following qualifications were set forth by the aforementioned Bulletin.

"Applicant must have a working knowledge of engine repair and the ability to rebuild motors of various types used on the Railroad. Also he **must** have **knowledge** of high pressure hydraulics and electrical systems and circuitry."

In all, Carrier received two (2) applications **for** the Assistant Mechanic position, one filed by the **Claimant**, Sectionman Ron C. Wiitala and the other- filed by a less senior **Sectionman**, Harold Wayne Woodruff. On date of February 28, 1978, Carrier issued a **communique** to the Maintenance of Way Department **Employees** titled "Assignment No. 5" apprising them that **Sectionman** Woodruff had been awarded the Assistant **Mechanic** position **stating** that it considered Woodruff to be the **most** qualified applicant for the position.

The Organization alleges that in **promoting** the less senior **employee**, Mr. Woodruff over the **Claimant**, Mr. Wiitala, the Carrier violated several rules of the Controlling Agreement bearing effective date of January 1, 1972, but primarily Rule 16 which reads as follows:

"**Promotion** shall be based on ability and seniority.
Ability being sufficient, seniority shall prevail."

The Organization argues that on the **basis** of his previous work experience, the Claimant does, **in** fact, possess sufficient ability to perform the duties of the **Assistant** Mechanic position and therefore, the **Claimant**, being the more senior **employee** should have been promoted over Woodruff. Furthermore, the Organization notes, the Carrier never **maintained** the **Claimant** was not sufficiently able but rather that Woodruff was the most qualified of the two. The Organization recognized that both **employees** were sufficiently able, but argues that under such circumstances Rule 16 clearly dictates that the most senior of the bidders will be awarded the position and not the most qualified.

Upon a thorough and analytical review of the record, we can find nothing of a substantive nature to show the **Claimant** did not possess sufficient ability. On the contrary, according to the Carrier's Chief Engineer, T. O. Stokke, in a letter dated May 22, 1978, to the Organization's General Chairman, Ferdinand **Schrank**, Stokke stated that based on comparative qualifications, Woodruff was considered by the Carrier to be "**much** more qualified." Further in the same letter, Stokke asserted, "It is still our (the Carrier's) opinion Mr. Woodruff is the most qualified" This position, we believe, in no way suggests the Claimant was not sufficiently able to perform duties of the Assistant Mechanic position, and that quite the opposite appears to be the truth, that is, that claimant was sufficiently able even though he may have possessed lesser credentials than those held by Mr. Woodruff. We therefore reiterate our position set forth as **follows** in Award 8181 as being on point in the instant case in which we held:

"**Rule** 7 is unambiguous. Its clear intent is that an employers right of promotion to any position for **which** he has '**fitness** and ability' depends upon seniority alone in spite of the possibly superior 'fitness **and** ability' of an employee junior to him. The rule can have no other meaning. 'Fitness and ability being sufficient, seniority shall prevail.' His fitness and ability need not be greater than, or even equal to, **that** of junior applicants; his fitness **and** ability need be merely sufficient for the purpose. On the other hand, if he has not fitness and —

"ability for the position (or, to follow more closely the words of the rule, if his fitness and ability are not sufficient,) his service, however long, will not qualify him for it."

Based on the foregoing, it is our determination that the claim be sustained. Claimant shall be allowed the difference between what he earned as a Section Laborer and what he would have earned as an Assistant Mechanic ~~had~~ he been awarded the position originally beginning with the date of Mr. Woodruff's initial assignment thereto and ending **May** 8, 1978, the date Claimant accepted the position of Trackliner Foreman by Assignment No. 9, that position being a higher rated position than the Assistant Mechanic.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.