

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22987**
Docket Number **MW-22921**

Richard R. **Kasher**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it failed to assign **Mr. C. H. Keister, Jr.** to the position of carpenter as advertised by Bulletin No. SX-44 dated October 11, 1977 but assigned **J. E. Arbaugh** thereto (System File **C-TC-543/MG-2124**).

(2) Because of the aforesaid violation, **C. H. Keister, Jr.** be allowed eight (8) hours of pay for each day **J. E. Arbaugh** occupies the carpenter's position referred to in Part (1) hereof, beginning sixty (60) days retroactive from January 23, 1978."

OPINION OF BOARD: Both Claimant **Reister** and the other employee **involved** in this dispute, **Mr. J. E. Arbaugh**, were employed as **trackmen**. **Claimant Keister** is **senior** as a **trackman** to **Mr. Arbaugh**. Neither employee possessed seniority in the Carpenter Classification.

A temporary vacancy on a carpenter position originated on October 3, 1977. **Trackman** **Arbaugh** made a request to be permitted to fill the temporary vacancy pending the issuance of a bulletin and award. **Mr. Arbaugh** was the **only** employee who made such a request. He was, therefore, permitted to fill the carpenter vacancy during the bulletining period.

When the vacancy was subsequently bulletined both Claimant **Keister** and **Mr. Arbaugh** made application for the position. No bids were received from employee with established carpenter seniority. Carrier awarded the bulletined position to **Mr. Arbaugh**.

On the property, the Organization argued a violation of Rules 2(g), 18, 19, 87(b), (c), (f) and (g), none of which deal with the issues involved in this dispute. Before this Board, the Organization argues that Rules 2, 13 and 17 were violated when Carrier assigned the junior (as **trackman**) employee to the carpenter position.

The Organization's reference to **Rules** 2, 13 and 17 were not part of the on-property handling of this dispute. Therefore, this Board will not consider these new **arguments** at this level. However, **even** without **considering** these Rule references, **it** is apparent from the evidence of record that the opportunity existed for both **trackmen** to request to be used to fill the carpenter vacancy. **Claimant** elected to not **take** advantage of the **opportunity**. Therefore, **we** can only conclude that Carrier's determination **relative** to the fitness and ability of Mr. Arbaugh for the **carpenter** position **vis-a-vis** that of **Claimant** was reasonable. No probative evidence to the contrary has been presented. The claim will be denied.

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:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.