

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23033
Docket Number MW-23019

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { **Brotherhood Of Maintenance of Way Employees**
(The Denver and Rio **Grande** Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned M. M. Sanchez to the position of assistant foreman (System Steel **Gang No. 6552**) Instead of assigning R. Porco thereto (System File D-26-**78/MW-18-78**).

(2) **Claimant** R. Porco shall be allowed the difference in what he received as a section laborer and what he should receive at the assistant foreman's rate beginning May 24, **1978** and continuing **until** the violation referred to in Part (1) hereof is corrected."

OPINION OF BOARD: Claimant in this case, a section laborer with a seniority date of **1972**, was not **offered** a temporary assistant foreman's position on System Steel Gang **6552** that had been advertised in **Bulletin 18**. The temporary position was **filled** by M. M. Sanchez, who had a seniority date of **1978**, pending the **filling** of the position by the **successful** bidder.

The **union** argues that under agreement Rule U(g)2 claimant should have **been** offered the Job of temporary assistant foreman while Carrier was advertising and awaiting bids **for** the position.

Rule **11(g)2**, however, specifies that an **employee must** be working in the gang or at the location to **qualify** for assignment to a temporary position. **Employee** Sanchez was working **on** the **gang** and was at the location when temporary assignment was made. The record reveals that claimant was **working** in another section (**Salida**) **when** the temporary appointment was given to Sanchez in the Malta Section.

Rule **11(g)2** clearly states that **employees must be** members of the gang or working at the location to be eligible for the temporary **appointment**. Claimant was not **in** the Steel Gang **6552**, nor was he working at Malta. He, therefore, **&es** not **qualify** under Rule **11(g)2**. This claim **must** be denied.

Award Number 23033
Docket Number MW-23019

Page 2

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 28th day of October 1980.