

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dana E. Eischen, Referee

Award Number 23094
Docket Number Hi-22673

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when Assistant Foremen D. D. LaGrange was not promoted to foreman on March 14, 1977 (System File 1-P-41-4/11-2000-40-20).

(2) The Carrier shall now

(a) promote Claimant D. D. LaGrange to the position of track foreman with seniority as such retroactive to March 14, 1977

and

(b) allow Claimant D. D. LaGrange to exercise said foreman's rights according to Article II, Section 8

and ..

(c) allow Claimant D. D. LaGrange the difference between the extra gang foreman's rate and the rate at which the claimant has been paid beginning with March 14, 1977 and continuing forward until such time as he is promoted to and assigned as a track foreman."

OPINION OF BOARD:

Claimant, employed initially as a Trackman in March 1976, was promoted to Assistant Foreman on March 15, 1977. Some three weeks later, under date of April 6, 1977, Claimant mailed a note to Carrier's Superintendent at Fort Madison, Iowa, reading as follows:

"I would like to establish my foreman's rights as track foremen next available opening for promotion. My starting date is March 26, 1976."

Carrier's Division Engineer replied to Claimant on April 11, 1977, as follows:

"**This** is in regard to **your** memo of April 6 requesting to establish your seniority as foreman. **Promotion to foreman's** position is at the option of management, and you will be informed when it is considered by management that you are capable of assuming this responsibility."

On the basis of the foregoing, the General Chairman on **May** 11, 1977 filed the present claim alleging that Claimant's contractual rights were violated. Failing resolution on the property the claim was appealed to this Board.

Review of the record **shows** no basis in fact or contract to support the claim. To prevail in such a claim, an **employee** must demonstrate the Carrier's assessment of his fitness and ability of the desired promotion was arbitrary, unreasonable or capricious. Award **3-21328** and **many** others cited therein. **Claimant** also has to demonstrate by substantial probative evidence that he indeed possessed the requisite fitness and ability. The only evidence originally relevant to that **issue** is **Claimant's** successful completion of a Student Foreman Training Program. Standing **alone**, however, that showing falls far short of carrying the burden of persuasion which the Organization bears in this case. The claim must be dismissed for failure of proof.

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 alleged violation **has** not been proven.

A W A R D

Claim **dismissed**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.