

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **23200**
Docket Number w-23195

George S. Roukis, Referee

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(St. Louis-San Francisco Railway Company

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

(1) The Agreement was violated when the position of assistant foreman as advertised by Bulletin SG-34 and certain other positions as machine operator were awarded to applicants junior to **Trackman M. G. Marion** (System File **B-1793/D-9784**).

(2) (a) Bulletin SG-34 be cancelled and rescinded;

(b) The position of-assistant foreman be awarded to Mr. M. G. Marion;

(c) **Claimant Marion** shall be allowed the difference **between** what he earned as a **trackman and** what he should have earned as an assistant **foreman** if he had been awarded the assistant foreman's position beginning with the date of Mr. **Gunn's** initial **assignment** thereto and to continue until the violation is terminated.

(d) Claimant Marion shall also be awarded seniority as assistant **foreman and** machine operator as of the date junior applicants were awarded the positions referred to in Part (1) hereof."

OPINION OF BOARD: The pivotal question before this Board is whether Claimant was unjustly treated or discriminated against when the assistant foreman's position, for which he applied, was awarded to another **employee** on June **19, 1978**. An unjust treatment investigation was held on October 27, 1978 pursuant to Agreement **Rule 91(b)** to determine whether Carrier improperly denied his position bid application and it was determined, upon the record compiled at that forum, that he was unqualified for this position. **Claimant** has appealed this disposition.

In his defense, he avers that his **seniority** date in Class I of the Track Sub-Department entitles him to this position, since he was senior to the other employee and that he possessed the requisite ability and merit to perform the position's duties.

Carrier **contests** these **averments and argues that he** was unqualified for this promotion and, thus, his seniority would not prevail as per Agreement, **Rule 33** where ability and merit **must** be sufficient. It contends he did not submit a written request in his **own** handwriting that he was interested In the Apprentice Foreman Training **Program** and that he was not **recommended** for this program by his supervisor.

In our view of this case, we **must** concur with Carrier's determination. **Recognizing** the seriousness of his allegations, particularly the discriminatory tone that he contends enveloped the selection decision, we painstakingly reviewed the investigative transcript to determine his qualifications and whether a subtle bias inhered in the selection decision. Outside of his vitriolic **and** scattered **assertions** that Carrier promoted other persons who were unqualified, he did not offer substantive evidence that he was **indeed** qualified. The purpose of an unjust treatment investigation is to permit an aggrieved **employee** the opportunity to present evidence that he was qualified and, at least, the equal in ability **and merit to the applicant** selected. It is designed to be a **scrutinous** process. From the record developed at the October 27 investigation, we do not find that Claimant or his supportive witnesses presented the kind of technical proof that is needed to adjudge fairly and objectively the scope and depth of his ability for the assistant foreman's position. To the contrary, we find that he didn't adduce sufficient evidence to establish his credentials. The record **does** not show that Carrier manifested bias **in the selection** of that position and we are constrained by these clear findings to deny the claim.

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 27th day of February 1981.