

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24112**
Docket Number MW-23837

Josef P. **Sirefman**, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company (Pacific Lines))

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

(1) The Agreement was violated when the position of extra gang foreman (Extra Gang No. 7) as advertised by Bulletin No. 505 **dated March 13, 1979** was awarded to an applicant junior to Fabian Casares (System File MofW 138-55).

- (2) (a) The position of extra gang foreman (Extra Gang No. 7) be awarded to Mr. Fabian Casares with seniority as such dating from March 29, **1979**;
- (b) Claimant Fabian Casarez shall be allowed the difference between what he earned in a **lower** rated position and what he should have earned as an extra gang foreman if he had been awarded the extra gang foreman's position beginning March 29, 1979 and to continue until the violation is terminated."

OPINION OF BOARD: **It** is contended by the Organization that Claimant F. Casarez being the more senior employee should have been awarded the Extra Gang Foreman position under Rule 8 over a less senior employee selected on March 29, **1979**. However, a review of the record by this Board establishes that the other employee had already applied for and had qualified as a Foreman some time prior to Claimant's application for training under Rule 8, and in addition the other employee already had **experience** as a relief foreman at the **time** of Claimant's application. Thus, the Carrier's selection of the other employee for the position of Foreman as of **March 29, 1979** was not arbitrary, capricious or in bad faith (See Third Division Award 23368). Therefore Claimant is not entitled to that **promotion** and the claim for back pay is denied accordingly.

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.

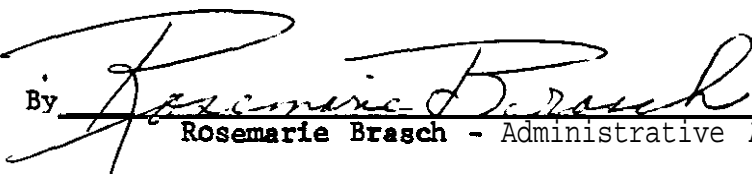
A W A R D

Claim denied.

NATIONALRAIROAD **ADJUSTMENT** BOARD
By Order of **Third Division**

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

