

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award' **Number** 24622
Docket Number **MW-24752**

Robert Silagi, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Missouri-Kansas-Texas Railroad Company

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

(1) The Agreement was violated when the position of track inspector as advertised in Circular No. 96 was awarded to an applicant junior to Section Laborer A. A. Boswell, Jr. (System File **400-169**).

(2)(a) The position of track inspector be awarded to Mr. A. A. Boswell, Jr. with seniority as such dating from December 2, 1980.

(b) **Claimant** A. A. Boswell, Jr. shall be allowed the difference between what he earned as a section laborer and what he should have earned as a track inspector beginning December 2, 1980 and to continue **until** the violation is terminated.

OPINION OF BOARD: Claimant is a track laborer with seniority as of **May** 1, 1978.

On November 17, 1980, Carrier advertised the position of track inspector. Claimant and R. K. Dobbs, with seniority as of May 19, 1980, both bid for the job. Carrier awarded the position to **Dobbs** whereupon Claimant protested the assignment alleging a violation of Rule 1 of Article 3 and Rule 1 of Article 5 of the labor agreement, which are quoted below:

"Rule 1. Seniority begins at time **employee's** pay starts in the respective branch or class of service in which employed, transferred **or** promoted and when regularly assigned, **Employes** are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules."

"Article 5. Bulletins and Assignments:

Rule 1. All positions except those of track laborers will be bulletined. Promotions shall be based on ability and seniority; ability being sufficient, seniority shall govern."

The Brotherhood argues that in order to prevail, Carrier must show evidence of probative value that Claimant lacked sufficient ability and merit for the promotion. An opinion or a bare assertion unsupported by evidence is inadequate to disclose a reasonable basis for Carrier's decision, (citing Awards 11279 and 19432). The Brotherhood further asserts ~~that the~~ allegation that the junior applicant was better qualified for the position because he had experience in supervising men or track maintenance whereas Claimant had none, is immaterial. Claimant's ability need only be sufficient for the position, (citing Awards 2638, 5857, 8181 and others). Moreover, the Brotherhood claims that Rule 10 **controls**. Rule 10 provides, in essence, that an employee who is awarded a bulletined position has 30 days in which to learn his new job. Claimant therefore had 30 days in which to learn and develop the skills required for the position of track **inspector**. Said Rule, asserts the Brotherhood, compels the Carrier to award the position **to** the senior applicant, **grant** him 30 days of training and experience and then make the ultimate judgment whether he would be able to perform all duties of the position, (citing Awards 5348, 8197, 14792 and others).

Carrier's position is that Agreement No. DP-543, dated November 15, 1979, a special agreement creating the position of track inspector, takes precedence over any other rule or agreement in conflict therewith. Paragraph 8 of said agreement reads:

'Positions of Track Inspector shall be awarded to senior Track Inspector on a seniority district, or if none, to senior, qualified Maintenance of Way **Employee** submitting bid **therefor**.'

The senior track laborer who bid for the position in question was B. J. McDaniel and not Claimant. The position was awarded to R. K. Dobbs, because Dobbs had seniority as Foreman, a classification superior to that of track laborer. Dobbs had supervised men and track work while the only experience Claimant had was as an operator of an off-track weed mowing machine. Claimant, it should be noted, had seniority only as a track laborer.

Carrier argues that the issue in this case is whether **an** employee holding seniority in a lower classification is entitled, by virtue of such seniority, **to** a job in a higher classification. Carrier points out that the awards cited by the Brotherhood **are** awards of another railroad and are not controlling in this dispute, particularly since the identical issue was previously adjudicated. Carrier states that this issue has been well settled in the negative by at least 8 previous awards - two of Public Law Board No. 76 and six of the Third Division.

Numerous Awards of all Divisions of the National Railroad Adjustment Board, have consistently held that unless an Award is egregiously in error, sound public policy demands that it be accepted and **followed**. We agree with the reasoning succinctly stated in Award No. 20283 - **Lieberman**, following awards on this property, involving the same parties, rules and issues. Award 20283 reads, in pertinent part:

"The primary thrust of Petitioner's position is that Claimant had rights to the foreman's position, and a promotion thereto, by virtue of his seniority in the lower classification. We have dealt with this identical issue involving the same parties on several prior occasions. In Award 11587 and Award No. 19 of Public Law Board No. 76 it was held that seniority in a lower classification did not entitle an **employee**, per se, to a promotion to a higher classified position. Petitioner argues that those Awards were based on an earlier slightly different Agreement. Without dealing with this distinction, the same principle has been expressed by this Board in several Awards with these parties under the same Agreement applicable to this dispute. In Awards 19707, 20085, and 20206 it is clearly stated that seniority in a lower classification does not automatically ensure promotion to a vacancy in a higher class. These precedents must be considered in addition to **the** obvious logic of Carrier's **contention** that it should not be forced to promote a man with Claimant's record to **a** supervisory position. We concur in the well stated thesis contained in Award 10911."

Accordingly, we shall 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 **Employee** 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.

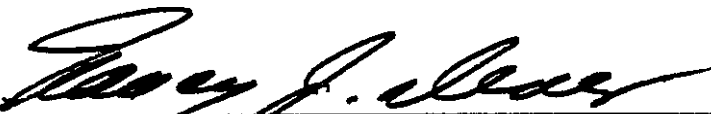
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

