

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **25070**
Docket Number MW-25048

George S. Roukis, Referee

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

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

(1) The position of foreman as advertised by Circular #14 dated August 19, 1981 shall be awarded to Mr. R. L. Lewis effective on or about September 8, 1981 (System File **400-200/2579**)."

OPINION OF BOARD: The pivotal issue in this dispute is whether Carrier's decision not to award the **position** of Foreman, Extra Gang 558 was violative of the rules cited by the Organization. These rules are referenced as follows:

"Article 3. Seniority

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. Employees 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 truck laborers will be bulletined.

Promotions shall be based on ability and seniority; ability being sufficient seniority shall govern.

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Rule 3. Bids in writing for new positions or vacancies referred to in Rule 2 of this **Article** must be received by the officer issuing the bulletin within seven (7) working days from date of bulletin. A carbon copy will be furnished the General Chairman and Local Chairman. Assignment shall be made within ten (10) working days from closing date of bulletin..

On August 19, 1981, Carrier issued Circular No. 14 announcing the vacancy of the Foreman's position, **Gang 588** and **inviting** bid applications from employees holding Foreman's seniority and employees not holding this positional seniority, but who desired to bid on the announced foreman's position. Claimant who did not hold foreman's seniority submitted an application for the position, but it was not assigned to him. A claim was filed on October 7, 1981 wherein Claimant argued that as the most senior employee he should have been assigned the position since employees other than those holding foreman's seniority **were** invited to submit bid applications.

In defense of his petition, Claimant asserts that the aforesaid rules do not preclude an **employee** in a lower classification from being considered for a position in a higher classification. He avers that this construction **is** buttressed by the clear language of Rule 1 of Article 5 which obligates Carrier to advertise all positions except those of Track Laborer. He contends that second paragraph pertaining to ability and seniority considerations by definition and industry practice construes promotion as advancement from a lower to a higher classification and maintains that Carrier is required to consider **employee** bid requests upon the criterion of relative seniority ranking. He argues that the decisional precedents cited by Carrier, particularly Third Division Award No. 11587 are noticeably distinguishable from the instant facts since the rules and situations addressed by those decisions are substantially different. More pointedly, he contends that revised Rule 2 of Article 3 does not confine seniority to an **employee's** respective classification which **is** the essence of the decisions cited by Carrier, but instead entitles an **employee's** seniority to positions in higher classifications provided ability is sufficient.

Carrier argues that this case is a resurrection of the same rules which have been considered by the Third Division and Public Law Board No. 76. In effect, it asserts that Rule 1 of Article 5 does not require Carrier to promote to a higher **classification** or position, employees who do not hold seniority **in** the higher or different classification. It contends that seniority in a lower classification does not automatically insure promotion to a vacancy in a higher class and cited as controlling Third Division Award No. 20283. In that Award which involved the same parties, the same issues and the same rules, the Board held that seniority in a lower position did not entitle an employee to a promotion to a higher classified position. Other Divisional Awards cited were 20206, 19707, 20085, 20206, 20291 and 20370.

In our review of this case we concur with Carrier's position. **Our** decisional law on this point is clear, namely that an employee holding seniority in a lower classification, is not automatically entitled to a promotion to a higher classification. Consistent with the language of Rule 1 of Article 5 and the prospective employees targeted by the August 19, 1981 bid circular Claimant was not barred from submitting an application for the position, since the circular invited applications from employees not holding foreman's seniority. He was not, however, per se entitled to the higher classification by virtue of his seniority. There is no Agreement support for this position. Moreover, Claimant has not sufficiently demonstrated that he was qualified for his position and thus, the question of presumptive ability is moot.

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

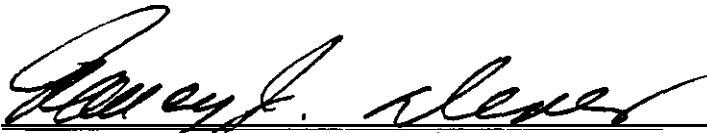
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.