

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 25366
Docket Number MW-25071

George S. Roukis, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(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 Mr. D. L. Willis was not afforded an opportunity **to** qualify for assignment and promotion to Bridge and Building Paint Foreman on and subsequent to July 13, 1981 (System File **30-400.8-818/11-1740-40-35**).

(2) Because of the aforesaid violation, Claimant D. L. Willis shall be afforded an **opportunity** to qualify as paint foreman, he shall be awarded a Group 2, Class 1 seniority date as of July 13, 1981 and he shall be compensated for all related wage loss suffered.

OPINION OF BOARD: Claimant argues that Carrier violated the Controlling Agreement, particularly Rule **8(a)** when it assigned a junior employee to fill the temporary vacancy of the Paint Foreman Position. This position was filled by Employee C. E. York during the period, **July** 13, 1981, through July 24, 1981, when the regular incumbent of the position was absent because of an off duty injury. Claimant avers that under Rule **8(a)**, he should have been accorded the opportunity to fill the vacancy since he was senior to Employee C. E. York. Claimant held seniority rights in **Group** 3 on a Class 3 position. with a seniority date of August 1, 1977. Employee C. E. York held seniority rights in **two** specific groups. He held seniority in Group 3 on Class 3 position since August 1, 1979, and later established seniority in Group 7 as a machine operator with a seniority date of June 19, 1980. Pursuant to the provisions of Rule 2, Section b, Employee York was permitted **to** retain seniority in Group 3, while occupying a Group 7 position. Claimant maintains that he filed a letter with Carrier for assignment to the Paint Group, which by definition, indicates Carrier's awareness of his interest in such **an** assignment, and implicitly contends that Carrier was **aware** of an impending Vacancy. Claimant argues that Carrier's assertion that **Employee** York was the best qualified is irrelevant and immaterial since the defining language of Rule **8(a)** merely requires sufficiency of fitness and *ability*.

Carrier argues that the claim is procedurally defective since it was not presented to the designated Carrier official within the required 60 day time limit set forth in Rule 14, Section **(a), (1)**. It asserts that the envelope in which the instant claim, dated September 11, 1981, was sent, was postmarked **on** September 17, 1981, and received in the Superintendent's office on September 21, 1981. Inasmuch as Employ@ York was assigned to the contested position on July 13, 1981, the claim was received beyond the prescribed time period.

As to the substantive merits of the claim, Carrier maintains that it was not required under any Rule of the Agreement to notify Claimant of the temporary vacancy involved herein, and asserts that Rule 8 is inapplicable to this dispute. In particular, it notes that Rule 8(a) refers to promotions to a higher class in an **employee's** seniority group. It avers that when the temporary vacancy on the B&B Paint Foreman position occurred on July 12, 1981, it fully observed the procedures regarding the filling of vacancy positions in accordance with Rule 10, Section (a). It argues that when it was unable to fill the vacancy in the manner required by the aforesaid Rule, it was not compelled by any other Agreement Rule to notify Claimant who held Group 3, Class 3 seniority of the vacancy occurring on a Group 2, Class 1 position. Moreover, it contends that it was not barred from any specific Rule from considering **Employee** York's oral request to **work** the temporary vacancy.

In **our** review of this case, we concur with Claimant's position that the claim is properly before us. While technically Carrier's computation appears correct, the record shows that Claimant was on vacation from July 13 through July 26, 1981. Presumably, under these circumstances, he **would** not be mindful of the assignment.

On the other hand, we agree with Carrier that Rule 8(a) was not violated. We find no evidence to support Claimant's contention that Carrier was obligated to call him, nor any evidence that Rule 8(a) was breached. In fact, we find his claim too general. Under the implementing requirements of this Rule, an **employee** desiring to be considered for promotion to a higher class in his seniority group must manifest such interest in writing to the Division Engineer with a copy of such correspondence to the General Chairman. The disputed position herein was not within Claimant's seniority group and accordingly, Rule 8(a) is not applicable. This Rule does not mandatorily require the promotion of the **most** senior **employee** in a lower seniority group to a higher seniority group.

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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985.