Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27026
THIRD DIVISION Docket No. MW-26255
88-3-84-3-676

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it assigned Mr. W. B. Via instead of Mr. D. O. Sutton to the Foreman-Inspector position at Richmond, Virginia beginning August 8, 1983 (System File C-TC-1936/MG-4261).

(2) As a consequence of the aforesaid violation, Mr. D. O. Sutton shall be afforded seniority in the B&B foreman's classification dating from August 8, 1983 and he shall be paid the difference between the B&B foreman's rate and the B&B mechanic's rate for each and every hour Mr. Via worked as a Foreman-Inspector beginning August 8, 1983 and continuing until the violation is corrected."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On July 13, 1983, the Carrier notified the Organization by letter of its intent to contract out the cleaning and painting of spans on the Richmond Viaduct at Richmond, Virginia. The same letter stated that a B&B Foreman would be assigned to work with the contract force.

The dispute arose after the Carrier placed a B&B Mechanic on the Foreman's job. The Organization essentially contends that the Carrier was in error when making this assignment because Rule 83 reads, in pertinent part, that: "If painting work is contracted, a Foreman will be used." It submits that the person used by the Carrier was neither a Foreman, nor was he on the Promotion List for Foreman. It maintains and has provided extensive reasoning therefore, that the Carrier not only violated Rule 83, but also Rules 2, 13, 18 and 19.

The Carrier, in its rejection letter of December 13, 1983, mainly stated that assignments, such as the one at issue, are determined by the employee's experience or expertise in the contract area, his availability, and his seniority. It then also provided extensive rationale for its position and contends that what it did in this case, it has done for many years.

The Board observes that both parties have progressed contentions and other matters in their Submission to the Board that were not brought forward on the property and, therefore, are not properly before us for consideration.

With respect to the record developed on the property, it is well-established that in matters such as this, the burden of proof to support its position rests upon the Petitioner. We have carefully reviewed the record developed on the property and conclude that it does not support the claim.

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 25th day of April 1988.