

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Burlington Northern Railroad Company (former St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it assigned junior Foreman D. L. White to fill a temporary vacancy as foreman of Regional Tie Gang T-4 from November 10, 1984 through November 30, 1984 instead of assigning and using Foreman D. L. Humphrey, who was senior, available and qualified to fill that vacancy (System File B-2265/EMWC 85-1-29C).

(2) Because of the aforesaid violation, Foreman D. L. Humphrey shall be compensated for all time worked by Foreman D. L. White, including overtime, in filling the position referred to in Part (1) hereof."

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.

By bulletin dated October 26, 1984, the Carrier advertised a foreman's position on Tie Gang T-4. Pending permanent assignment, the Carrier assigned a junior foreman to the temporary foreman's position on Tie Gang T-4 where he served until the successful bidder took the position. Relying upon Claimant's greater seniority, the Organization argues that Claimant should have been assigned the temporary position.

Rule 31 provides:

"Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Carrier as hereinafter provided."

Rule 38(a)(4) provides:

"(a) Assignments to new positions, or to fill regular vacancies on existing positions, will be made in accordance with the following:

(4) New positions or vacancies may be filled temporarily, pending permanent assignment."

In a factually similar case between the Carrier's predecessor and the Organization which involved the same language as found in Rule 31, we sustained a claim on behalf of a senior foreman where a junior foreman was assigned to a two day vacancy created by the absence of the regularly assigned foreman. In Third Division Award 20120, we stated:

"We have consistently held that this rule applies to all positions, whether it be a regular bulletined position, a temporary position or one that is required to be performed only with overtime work. Seniority provisions are included in agreements for the benefit of the senior employes. They seek to protect and give preference in jobs, promotions and other opportunities to employes with greater seniority."

We find the reasoning in Award 20120 persuasive in this case. By force of that Award, Claimant's seniority entitled him to the temporary position.

The fact that Claimant did not bid on the bulletined position does not change the result. The issue in this case concerns the assignment to the temporary foreman's position and not to the bulletined position. Similarly, the fact that the temporary position may not have been a "promotion" as designated by the caption to Rule 31 is not persuasive. The clear language found in the body of the Rule addresses the application of seniority rights as those rights apply to "positions" and not specifically to "promotions." Finally, the Carrier's right to determine the qualifications of an employee do not come into play in this matter. There is no evidence that Claimant's qualifications were ever considered and that he was deemed unqualified for the position.

However, with respect to the remedy, we agree with the Carrier that compensation in this matter should be limited to the difference, if any, between the wages earned by the junior foreman assigned and those earned by Claimant during the claimed period.

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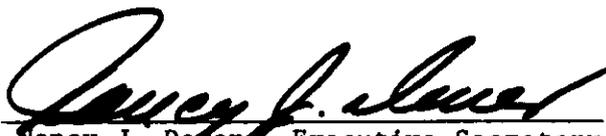
Award No. 27922  
Docket No. MW-26970  
89-3-85-3-754

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.