

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29648
Docket No. MW-29917
93-3-91-3-299

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(
(Kansas City Southern Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned a junior employe to assistant foreman's position advertised in KCS Bulletin No. 23, dated February 21, 1990, instead of assigning Track Laborer J. Hayes thereto [Carrier's File 013.31-369(3)].

(2) As a consequence of the aforesaid violation, Track Laborer J. Hayes shall be allowed the difference in pay as between his regularly assigned rate of pay and that of the above-described assistant foreman position beginning on March 7, 1990 and seniority as assistant track foreman dating from the first day of junior employe O'Donnell's service in said position."

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 employe 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.

This dispute arose after the Carrier promoted an Apprentice Foreman who was Junior to Claimant to the position of Assistant Foreman. The Organization asserts that Claimant, should have been awarded the position under the provisions of Rule 10.

Rule 10, in pertinent part, reads as follows:

"Promotions from and to positions covered by this agreement should be based on ability, merit and seniority. Ability and merit being satisfactory, in the judgment of the management, seniority shall prevail."

In its denial letter on April 20, 1990, the Carrier stated that "In Management's judgment claimant does not possess the necessary fitness and ability to perform the duties of the position claimed." The Organization asserts that in its opinion Claimant is qualified for the position.

The Carrier by letter of June 6, 1990, also made the material assertion that the past practice on the property is to give preference in promotions to Apprentice Foreman over Laborers. The Organization did not rebut this assertion and it thus stand as established fact.

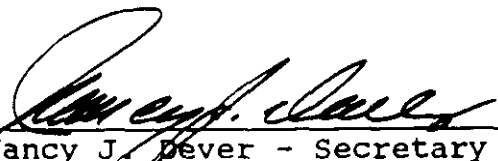
Under well-established precedents, the Organization has the burden of proving that the Claimant was qualified and that the Carrier acted in an arbitrary and unreasonable manner (see Third Division Award 28008). No such showing was made in this case and we will therefore deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.